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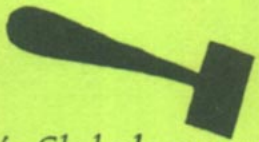
Ideas on Liberty

NOVEMBER 1975



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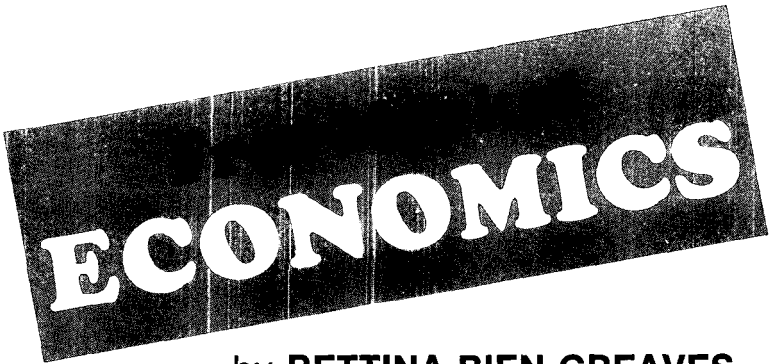

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VOL. 25, NO. 11 • NOVEMBER 1975

A Matter of Choice — Ruth E. Hampton — 643
Let us choose and be responsible individuals.

Common Sense — Whatever Happened to It? — Ralph Bradford — 646
A Bicentennial call for a return to the values of the Founding Fathers.

The Story of Gunch and His Magical Scheme — Alice Stephen Gifford — 657
The other side of something for nothing.

The Search for an Ideal Money — Henry Hazlitt — 660
The trick is to keep our money out of the hands of political controllers.

A Freedom Under Fire — Ronald F. Cooney — 673
The pros and cons of gun-control laws.

Police Power: Sovereignty's Sledgehammer — Ridgway K. Foley, Jr. — 677
The nature of police power and how it encroaches on freedom, if unlimited.

Engineering Regulation: The Return to Medievalism — Larry W. Sarner — 688
A serious look at the likely consequences of licensing and regulation of engineers.

Book Reviews: — 700
"Street Corner Conservative" by William F. Gavin
"Common Sense Economics: Your Guide to Financial Independence in the Age of Inflation" by John A. Pugsley
"The Federal Rathole" by Donald Lambro

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A Matter of Choice

RUTH E. HAMPTON

NINETEEN BALD EAGLES flew over the house this morning on their way to the lake. That's a record. I don't often spot more than nine or ten. The half dozen deer feeding on the hill didn't even glance up. The stellar jays did, and saw me at the window. They are clamoring for their usual allotment of sourdough hotcakes.

Our family home is one mile up a canyon that contains no one else. In this special spot we have innumerable birds and squirrels, everyday deer, and an occasional badger, porcupine, or coyote. Sometimes there's a passing car or pickup. Our yard is the place where the snow plow turns around; the place where parents tell their children on summer days: "Don't fish past —"

We have plumbing, television, and an old-fashioned stone fireplace warming an acrylic shag rug. We grow an organic garden, yet we live on lumber mill wages and buy coffee imported from exotic places. We keep a horse and drive a Maverick; vote for candidates that favor wilderness and others that work to create new industry. We're comfortable and satisfied and confused. If we fight development, we might be saying, "Now that I've got my place in the country, nobody else is welcome." If we support only economic progress, are we saying that enough money is more important than enough room?

Our three children have shared us with a dozen other youngsters through foster care for we enjoy kids, and glow when someone announces a baby. Still, we shudder at birth statistics. We are caught in the paradox of the Twentieth Century — the paradox of being so content that we're uneasy.

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In this unease we are not alone. When we talk to friends or relatives who began as we did, but who have moved on to exciting jobs and high rise apartments, we find they too are feeling guilt because they're happy. People who have worked hard for success apologize for making it!

Where does this guilt at following our talents and tastes into a life of our own choosing come from? A lot of it comes from the articulate advocates of seize-from-those-that-succeed and force-on-those-who-don't through taxation. There is no real reason for anyone who has chosen a legitimate goal and worked to realize it, to feel that he should be handing everything to the government for redistribution and regulation. Voluntary sharing is one thing; confiscation, another.

Left to themselves, human beings will meet each others needs. And we needn't all start out even either. In a truly free society, those with less have greater incentives than the rest.

Our own early homes included mill shacks, a homemade camp trailer, and the back bedrooms of other people. For a while we only dreamed of something better. Then we realized that dreams wouldn't do it. We chose a way to live, and worked to attain it. I chose full time homemaking and he left seasonal work he liked to build a world he could love, working his back and leaving his mind to wander. It wanders out to the canyon acres that weren't practical, to the life style some may envy but others would find confining. Isn't that how it should be?

If a man is poor and he'd rather stay poor than struggle, he's entitled to that. If a neighborhood is crowded and its occupants would rather stay crowded and familiar than face uncertainty, that's their right.

Each individual's profession, business, and way of life should be his own. If those who find rural lives dull want to strike out for the city and for the stimulation of jobs, businesses, cultural advantages, and positions of leadership, they have the right to pursue such goals. The phrase, "pursuit of happiness" did not designate *which* happiness or give leaders the duty of defining it. That was left – properly – to the individual.

Freedom is the option of succeeding or failing because we did or did not make a wise choice. No computer, guideline, or political system should dictate the choice. A life style, like a system of economics, is only good when it works. It works when those involved in it are doing what satisfies them. If it is being propped up, paid off, and regulated, it fails

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to stand alone and ultimately becomes a holdup – in every sense of the word.

Isn't it significant that, at a time when the world is in desperate need of more efficiency, lower prices, more goods, governments seem determined to upset the normal laws of supply and demand, the natural incentives of enthusiasm and profit, and substitute artificial quotas and made-up controls?

Any wise parent knows that the child who is confined past the peak of a particular learning phase does not make up this loss easily. He holds back and becomes overdependent. Still later, this same child rebels against too much interference. Such youngsters often become helpless whiners and misfits. There's nothing wrong with helping hands and shoulders to lean on along the way to a business, marriage, or life, but there's no such thing as a completely free ride either. Judgment must be exercised if it's to grow strong. Too many "experts" are viewing the American people as children to be kept in cribs and strollers. When official bribes and penalties put props under certain ways of earning a living, it should not surprise us that a little too much here or there finds the whole structure toddling uncertainly. Left to develop naturally, we will balance our lives and produce to meet all human needs.

Our family situation is a source of joy to us and we're grateful, but for every person who'd love to live in the hills, there's no doubt another who would rather shoot the breeze with his neighbors and feel the glowing safety of streetlights at night. We all need each other.

I wasn't sure about this canyon as a home at first. My husband was. He was sure enough to plead and work and convince. Today I thank him every time I see a fawn in my garden or watch a bald eagle soar, because I chose too. And every day we both breathe a "thank you" for the privilege of living in a land that – after two hundred years – still says to its citizens: "Choose."

I can think of no better way to celebrate our country's birthday and get rid of our fashionable guilt complexes than by joining together to keep the choices we still have and to gain back the ones we've lost. From the smallest personal decision, through local community action, and on to the National Elections, every move that takes power out of government hands and puts it back in the grip of those for whom governments were instituted is a step in the right direction. Enough steps make a mile. Let's start walking.

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COMMON SENSE — Whatever Happened to It?

RALPH BRADFORD

TWO YEARS before the Declaration of Independence was adopted, an Englishman arrived in Philadelphia to begin a new life — and it was none too soon for him.

He had spent several years at sea, worked at a number of poorly-paid employments, held one or two minor civil service appointments, dodged importunate creditors, and struggled to supplement his meager grammar school education by attending lectures on science. He was nearing forty and badly in need of a change. Now, thanks to a meeting with Benjamin Franklin in London, he was about to get it.

His name was Thomas Paine, and with his arrival in Philadelphia he stepped into the pages of American history. Later he would find a niche in French history as well. Franklin, impressed by Paine's potential, had given him a letter to his son-in-law, Richard Bache; and Bache, in turn, put him in touch with Robert Aitkin, who was about to found the *Pennsylvania Magazine*. Paine helped him with that project, and for nearly two years served as editor of the new publication. By that time it was January of 1776 — a fateful year for America, and for Paine.

The breach between England and her American colonies had

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been widening, due on the one hand to skillful agitation by such Colonial spokesmen as the Adamses in New England and Jefferson, Henry and others in the south, and on the other hand to the incredible stupidity of a succession of British ministers and Colonial governors. The governors, especially, have scarcely been given their due as creators of discord. Looking back from 1975, it is hard to believe the arrogance and ruthlessness with which some of them conducted their administrations. To be sure, it was an age of ruthlessness in the management of public affairs; but distance from London seemed to bring out the worst in certain types of magistrate. Sir Edwin Sandys in Virginia and William Bradford at Plymouth are examples of the best in early colonial leadership; Sir Thomas Dale of Virginia, with his record of shooting, breaking and even burning those who opposed him, was probably the worst.

But a lot of history is involved between the settlement of Jamestown and Plymouth and the tense period that climaxed in 1776. Distance tends to telescope the decades, and it is hard to realize today that 187 years of experience, good and bad, had gone into the making of colonial America. In that long time, almost without their being aware of it, literally a new race of people, the Americans, had been forged into being.

Ready for Independence

We are apt to think of what we now call "The Spirit of '76" as a mood of fiery rebellion on the one hand and of ruthless repression on the other. And both attitudes were indeed present. But quite apart from the heat of grievance and dispute, there were thoughtful men on both sides of the Atlantic who realized that a permanent state of union was not likely to be maintained between an insular England and a remote group of colonies that were plainly destined for great development and ultimate nationhood. Such an idea, however, was anathema to the American loyalists, and was utterly repugnant to those short-sighted British leaders who were not concerned with a long-range view of empire, but were determined to bring the rebellious colonials to their knees.

All this, however, leaves out of account the attitude of the average citizen of Massachusetts, or Delaware, or Pennsylvania, or Virginia. They were confronted with a wrenching problem of psychology and habituation. Despite the fact that by 1776 the colonies were by no means exclusively, or even predominantly, populated by people of British origin, England, by

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force of long usage, was still regarded as the "mother country;" and by both sentiment and inertia the colonists generally were reluctant to dissolve the union.

They were angry over the tax policies of their overseas government; they were ready to resist stoutly the indignities they had been made to suffer; they were even prepared, at cost of blood and life, to fight the hated "Redcoats" – as they had demonstrated at Bunker Hill and elsewhere. But they were not yet quite ready to face the ultimate issue of separation. Somehow, they felt, reason would prevail. The "bonds of consanguinity" would be stronger than the divisive influences. In some way the present troubles would be resolved, the wounds would be healed, and all would be well. Hope springs eternal; and in the large affairs of a troubled mankind it is well that this is so; but hope wasn't doing much for the cause of American independence in the early weeks of 1776.

Controls Imposed

The situation, in brief, was this: Around 1764 the British parliament enacted a bill known as the American Revenue Act. It was the first effort at raising money for the Crown in the colonies, and it aroused much opposition. It was followed in 1765 by the Quartering Act, which required the colonies to find barracks and supplies for British troops. Next, in the same year, came the detested Stamp Act. It was intended to reimburse the British government for about one-third of the outlay for a colonial military establishment which was, ostensibly at least, to protect the colonies from the Indians, the French, and other dangers.

In a different atmosphere the colonials might have accepted this as a reasonable division of costs. But the act was passed in England and *imposed* on the colonies ("Taxation without representation;") and it was constantly visible and irritating, because the stamps must be affixed to nearly everything the colonists used, even to dice and playing cards. It aroused great animosity, and it was repealed in 1766, partly through the efforts of William Pitt, but largely because of the devastating testimony given by the ubiquitous Benjamin Franklin, who appeared in London as an agent for Pennsylvania. But it left deep scars of resentment; and these were not healed by the Tea Act of April 1773, the additional Quartering Act of 1774, and the so-called Coercive Acts of the same year, which were designed to discipline Massachusetts by closing the Port of Boston.

All these and other grievances

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led to the calling of the First Continental Congress in September of 1774. Getting quickly down to business the Congress said (with 12 of the 13 colonies represented) that:

(a) the Coercive Acts should not be obeyed;

(b) Massachusetts should withhold taxes from London until those acts were repealed;

(c) the people generally should arm and form their own militia; and

(d) that stiff economic sanctions should be invoked against the British.

But the Congress might have saved its breath and ink. Whitehall was obdurate . . . and so were the colonies. Lord North came forward with a Conciliation Plan, but the Lords would have none of it — and indeed, Parliament countered with the New England Restraining Act, which forbade first New England, and later New Jersey, Pennsylvania, Maryland, Virginia and South Carolina, to trade with any nation except Britain.

On February 2, 1775, the Second Massachusetts Provincial Congress met at Cambridge and framed measures that would prepare that Colony for war. On February 28 British troops landed at Salem to seize colonial military supplies. On April 18 some 700 British troops set out from Boston for Concord to destroy supplies known to be stored there; and that night three men — Dr. Samuel Prescott, Richard Dawes, and especially a silversmith named Paul Revere — galloped into immortality.

A Continental Army

Thereafter events moved with great speed. In May of 1775 the Second Continental Congress met and took a number of actions, the most significant of which was military — namely, to adopt the colonial forces (which by then were actually besieging the British in Boston) as a Continental Army; to authorize the raising of six companies of riflemen to march on Boston; and especially to elect George Washington as Commander-in-Chief of the American forces. Before he could get to Boston, however, the Battle of Breed's Hill (to be known as the Battle of Bunker Hill, the nearby eminence originally selected for the Colonial position) was fought, and Ethan Allen had seized Ticonderoga and Crown Point. An undeclared war was rapidly getting into gear.

But what was the issue? The colonists were angry about unfair taxes and discriminatory laws. They resented the highhanded methods of the "home government"— a government they had no part in electing and in which they had no representation. They personified

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these and other evils in the corpulent image of King George, and damned him roundly. But are these the sort of issues that men will die for? Will they fight a long and bloody war over a tax on tea? After Breed's Hill – what? With perhaps a third of the colonists strongly opposed to *any* war, how could they be led to support one over a matter of quartering some red-coated troopers?

As for creating a New Nation, which would have been an imaginative and emotional issue big enough for blood, hardly anybody was even thinking about it, and those who did were not at all enthusiastic about the idea. Benjamin Franklin, though he had long before written a plan for a union of the colonies *as colonies*, had small confidence that they could be formed into a nation. Patrick Henry is known as a great patriot, and so he was; but his patriotism was centered in the sovereign state of Virginia, even though at Philadelphia he had declared to the First Continental Congress "I am not a Virginian, but an American." But in the crunch he opposed the adoption of the Constitution because he thought the country was just too big for any one government to manage!

In short, what the colonial leaders needed was a gut issue – and they simply didn't have it.

Thomas Paine

And so we come back to Thomas Paine. On the 9th of January 1776 he published at Philadelphia a little book – a pamphlet, really – with the title *Common Sense*. And in no time at all there was no longer any question about what the issue would be. It was Independence! Not nationalism. Not nationhood – not yet, that is, except perhaps in the minds of a very few. Paine, indeed, came close to it in his "hints" on how to organize for independence, though even his concept seems to have been that of a federation of free colonies. No,

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not a new nation — not yet. That was something else. But *independence!* Just to be free of England and on their own!

American Independence: A Pearl of Great Price

Men saw at once that here was a value worth all it might cost. Paine put it clearly: "The object contended for ought always to bear some just proportion to the expense. The removal of North [then Prime Minister] or the whole detestable junto is a matter unworthy the millions we have expended.... If the whole continent must take up arms, if every man must be a soldier, it is scarcely worth our while to fight against a contemptible ministry only. Dearly, dearly do we pay for the repeal of the Acts if that is all we fight for."

Paine's little book was read everywhere throughout the colonies, and with tremendous effect. Washington wrote of it that it had "worked a powerful change in the minds of many men." Paine was a master of biting invective, but he employed little of it in *Common Sense*. The argument for the most part (except when he paid his disrespects to kings in general and George III in particular) is calm, simple and effective. Nor did it lack passages of sardonic humor, as when he wrote: "Small islands ...are the proper objects for kingdoms to take under their care; but there is something absurd in supposing a continent to be perpetually governed by an island."

Some members of the New York Provincial Congress, still loyal to England, considered issuing a pamphlet to answer Paine's thesis; but they finally decided that it was unanswerable, as indeed it was. In a short time the book had been read all over the colonies — and from that time on there was very little question as to what the Continental Congress would do when it met in June. *Common Sense* had furnished the answer.

And common sense—not the book, but the frame of mind and habit of behavior denoted by the phrase — supplied the people of the new country with many another answer. When the weary years had dragged on to Yorktown and the war was ended, common sense led them to adopt in earnest the idea of a strong central government to replace the sprawling and conflicting authorities of the several colonies.

Common sense instructed them to make it simple and close to the people, and to limit its authority.

Common sense, plus a hot memory of past injustices, led them to avoid too much central domination, and to reserve great power and autonomy to the states. They were not intent upon making a government that should dominate their

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lives and regulate their occupations, but in creating and defining the minimums of power and authority necessary to guarantee their freedom.

Common sense told them that men work best where there is the least restraint upon their activities, other than what is necessary for the enforcement of laws that were enacted for the protection and benefit for all.

Common sense, some 40 years later, would lead them and their political heirs to complete the break with England by fighting the War of 1812.

Trial and Error

During that period the new young nation was going through a time of trial and error. Its leaders were feeling their way into nationhood and international status. No doubt there were misjudgments and blunders, since they too were men of passion, prejudice, occasional ignorance, and fallibility, like their fathers and great-grandchildren. Some years ago it became a kind of literary fad to point out their errors and dwell upon them at wearisome length.

Some historians and self-nominated social critics have ridiculed Washington himself as being rather pettily concerned with titles and protocol. They forget that he was a trail maker, ever conscious of the fact that he was the first President of a nation destined for a great role in the drama of world history. If he fussed over details of etiquette he was also meticulous in his conduct as head of state; and in both his social and official deportment he was guided mainly by the dictates of common sense. He wanted the new nation to develop its agriculture, trade and industry with the least possible restraint and interference by the government. The plain common sense born of his own experience in manufacturing, farming and land development cautioned him to avoid the dangers of unrelieved public debt, and he wrote solemn warnings against it.

Other leaders were equally influenced by the canons of ordinary good judgment. They were in the main idealists, even visionaries, as to the future of their country; but they were quite practical and down-to-earth in the important matter of keeping the country solvent and making its institutions work. They accepted the idea of a public debt (even Paine wrote approvingly of it) as an ordinary and recurrent fiscal phenomenon in the life of a going concern; but nobody was willing to spend the nation to the verge of bankruptcy.

Franklin's oft-quoted reply to the lady who, when the Constitutional Convention adjourned, asked

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him "What have you given us?" supplies the clue to a very pragmatic attitude then prevalent. He said, as most people now know, "A republic, madam — *if you can keep it.*" Like most of his peers, he was well aware of the tendency people have always shown to load their governments down with adventitious paraphernalia — the machinery of special privilege, sumptuary regulations, social and political tinkerings, much of it haloed over with the aura of good intent, but all of it an ultimate tax burden on the average citizen and another handicap in his quest for human progress and freedom. If the Founders had needed an object lesson they had it glaringly before them in the worthless "Continentals" (paper money) they had been forced to issue in financing the war.

It Stands to Reason

Common sense! What a wealth of homely virtue the term implies! And what a service its exercise has been, in both great and small affairs. Let me recall a personal experience with it. Many years ago my wife and I were preparing to "restore" an old house we had purchased in northern Virginia. The memory of it fits into this article the more readily because we discovered that the place had actually belonged to George Washington at the time of his death. The house, which had become dilapidated, was in two sections. The two-story part, we knew from local records, had been built during the Civil War; but the lower log section was undoubtedly there when Washington owned the place, for in a careful listing of his properties attached to his will he mentioned that the place had "a good house" on it.

But I am reaching too far back. Our renovation, I assure you, was undertaken in fairly modern times, relatively speaking. Full of enthusiasm and good intent, we plunged into our project — and before we knew it we were up to our ears in blueprints, elevations, levels, heating systems, patios; all outside our expectations and certainly beyond our resources, which were slender. So we said woah-up, halted everything, caught our breath — and started over.

In our neighborhood there was a small-time house builder — a carpenter, in fact, who, with his two sons and a couple of neighbors, made a dependable construction team. He himself was a transplanted, twangy product of Maine, and he belongs in this chronicle because I am remembering two phrases he often used, both pertinent to our present discussion. With a yellow scratch pad and a stubby pencil, he went over the

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place with us, floor by floor and foot by foot, asking what we wanted, sometimes agreeing with our wishes by saying "Eyeh" (which is down-east for "yes") but often saying "no" quite firmly, and explaining why, structurally, it couldn't or shouldn't be done. And over and over, in explaining matters to us, he made use of two phrases: (a) "it stands to reason" and (b) "it's just common sense." Before I leave him, let me record gratefully that his frequent appeals to reason and invocations of common sense saved us a great deal of money and finally gave us a house of real comfort, authenticity and beauty.

It stands to reason. It's just plain common sense. Homely, potent phrases! When high-flown arguments load us down with rhetoric; when bureaucratic jargon confuses or misleads; then simple, common sense may well be the really dependable compass, in lieu of more sophisticated guidance. It is a safe rule, for statesmen as well as house builders. Indeed, it was often followed by the men who set the course of our country in its early days.

Nor was its use confined to the foundation builders alone. Towering figures of the later years, unversed in abstruse argument, resorted to its homely logic with great benefit to the nation. Writing of Abraham Lincoln during the Civil War, Carl Schurz lamented that the President had been greatly underestimated. "He is a man of profound feeling, correct and firm principles and incorruptible honesty," Schurz wrote; and he added that Lincoln "possesses to a remarkable degree the characteristic, God-given trait of this people — *sound common sense.*"

The Aging Process Brings Fears and Doubts

The decades have slipped by and the nation has aged and grown. From less than three million people on the edge of a vast world new to men, we have become a 210-million-people giant, spanning a continent — a nation of vast wealth, importance and influence. We are rich in achievement, science, culture. We should be the envy of the world, and in some ways we are. Yet we are deeply troubled. The way ahead is obscure. We fear for the present; we are doubtful about our future. Once rich in minerals and fossil energy, we now lag far behind some less "advanced" countries, and we are dependents in the markets of the world for some of the rarer ores, and for liquid fuel.

More than all this, we are bewildered in a fog of pseudo-economics, and are being misled into disastrous experiments by the in-

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fluential devotees of this or that sociologic or economic "ism."

In the name of financial stability we have debased our money and cut in half at least, possibly to one-third, the buying power of the dollar holdings of our people — a bitter pill for those who possess some degree of wealth, but a disaster for those who do not. The process by which this is done is called "inflation" and it is made to appear as a whimsical kind of thing that just happens now and then, instead of the predictable result of certain actions — such as following a permanent policy of not paying our debts.

With a loudly professed interest in human welfare we have set up a governmentally operated old age pension system that has been broadened and extended until it now threatens to collapse unless further inroads are made into the earnings of everybody to support it. To the end of "protecting" consumers, we have passed regulatory laws and created enforcement agencies that have driven many producers frantic (and sometimes out of business) with nagging bureaucratic supervision and expensive, frustrating, duplicating paper work. Confronted with the greatest need we have ever known for energy in the form of fossil fuel, we have not only penalized the production of such fuels but have hampered the exploration necessary to find them.

All this at a time when we very badly need an active economy with high levels of employment, wages and corporate earnings.

Well . . . but these are themes for books, not paragraphs; and many books, indeed, have been written, and no doubt will be, about what happened to this country around the middle of the 20th Century. Perhaps it will be enough to pose here one or two questions in conclusion.

Act Responsibly

First, if the New York or Philadelphia or Boston of, say, 1800, had ever foolishly spent itself into bankruptcy, with no apparent regard for huge deficits annually incurred, — what would its leaders have done when finally confronted with fiscal reality? Run to Washington and beg a handout from the national government? Try to get the state legislature to bail them out? Cry to heaven that they were being mistreated by banks and other leaders? Or would they, like any sensible householder or any prudent housewife, face a few facts, cut out some frills, have a little less "fun" for a while, pay up their debts, balance their budget, and in general proceed like . . . well, like people of common sense?

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Second, if the Federal government had failed for many years to live within its income, and if as a result it had accumulated a debt of some 500 billion dollars; and if the government had simply lost count of all the agencies and bureaus tucked away in its vast buildings in the Capitol and all over the country; and if the deficit for the current year was going to reach the staggering amount of sixty billion dollars....

Given such conditions, would President Adams or Monroe (or whoever) listen long to a lot of academic theoreticians and try out a number of time-worn expedients — or would they face reality, as ordinary people do in their affairs? Perhaps they might remember that Adam Smith had said, not long before, that "what is prudence in the conduct of every private family can scarcely be folly in that of a great kingdom." If so, would they go on spending and running up ruinous deficits, or would they sensibly cut out some unnecessary or less urgent things, spend less than is to be taken in, apply the excess to paying off the debt, and so restore the nation's credit and the value of its money? That's a great oversimplification of a complex problem, perhaps — but is it also, maybe, just common sense?

And finally, in surveying the current scene and trying to understand the American situation, we encounter the following episode: In recent months one of the television networks ran a series in which a reporter each day would visit an average family and ask how they were being affected by the depression. One such visit included two parents — young people perhaps in their middle thirties, and two sub-teenage children. Home scenes were shown — an average, well-kept middle class dwelling.

But this was the clincher: The father said his regular job (at $14,000 a year) simply didn't give them enough to maintain a proper standard of living; so he was moonlighting on a job that paid him an additional $10,000 a year. And they were still having trouble making out on the $24,000 because, for one reason, the two children kept asking him for things, and he was forced to tell them he just couldn't afford to buy them!

So, all things considered, perhaps one more question is in order at the end, as it was at the beginning:

Common sense . . . whatever happened to it?

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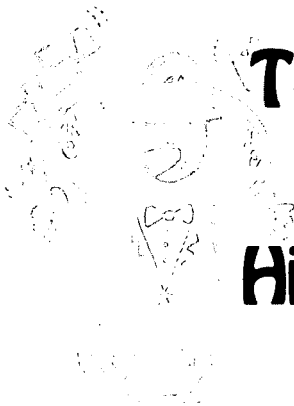

The Story of Gunch and His Magical Scheme

ALICE STEPHEN GIFFORD

ONCE UPON A TIME there was a person named Gunch who was hired by ten friends to do certain things for them. He did not work and produce things for them to sell or even to eat or wear or live in. He acted as a guard to protect their properties and occasionally he helped settle arguments between them and he performed other small tasks for them. But absolutely all of Gunch's support came from the contributions given to him by his ten friends.

One day Gunch had an idea for what seemed an excellent new service he could provide for his friends. He decided to help them to save for their old age. So Gunch went to his friends and made this proposal.

"I will set up a fund for all of you who support me. If you will give me a small amount of money extra each month, I will invest it for you. I will keep a careful record of this fund and when you reach the age of 65, I will start giving it back to you, one hundred dollars a month at a time."

The friends agreed that this was a superb plan. So they each began to contribute $5 a month extra to Gunch. He accepted their $50 total and put it into a special box marked "Old-Age Funds." Then Gunch invented a grand way to invest their money. He printed up IOU statements which carried a guaranteed interest of 3 per cent. This IOU said he had borrowed the money and would pay it back with the interest in the future when it would be needed. Then, leaving a small amount in the box just in case it might be needed suddenly, Gunch replaced the rest of the money every month

Mrs. Gifford of Lynchburg, Virginia, is a teacher.

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with the IOUs and proceeded to live on almost all of the money his friends were giving him.

Day of Reckoning

All too soon the time came to start paying back the money. Gunch had a problem. First, he had to be sure he could get new friends, young and working, to join his old friends so that their new payments into the fund would redeem the IOUs and pay out the promised money. He had to be sure of many, many new friends, or else he had to increase what the old friends paid in so he could support the $100 a month payments out. $50 coming in would never do it. To make matters worse, pay-out time came rather quickly for some of the original friends. They were in the plan only a very short time before they reached 65 and had paid in far less than they would eventually receive back. These people were going to spend many years living on the money which the new friends paid in. Furthermore, unless there were an assured group of younger people coming in who were willing to assume the burden, the friends who supported the first payments out would not have any money left for themselves—especially if Gunch's whole scheme were ever discovered.

Now Gunch had to start collecting money and borrowing money and shifting money from one person to another faster and faster. He began to raise the $5 a month charge a little at a time until it doubled and tripled and then finally became almost 6 times as much. The friends who were now living on the pay-outs were finding that $100 a month was not so much as it had seemed to be when they agreed to the idea in the first place and they begged Gunch to give them a little more. Gunch and the other friends did feel sorry for these old friends so they agreed to give them just a little more, and then a little more than that, and then. . . . and so forth. But this kindness only made Gunch's situation worse.

Unfortunately, we have to stop this story right here at the crisis. Every good story gets its hero into a terrible situation and then when it reaches the climax of problems for the hero, the plot figures out a way to rescue the hero and end the story. But no one yet knows how Gunch can be rescued. His magical scheme put him into such a mess and no one can find any magical scheme to get him out. So we have to leave Gunch with no end to his story yet.

This little story of Gunch and his scheme is, in essence, exactly the story of Social Security. A

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government has no money of its own. It lives on the money which its "friends" – its citizens – give it. The money which is supposed to be in a fund gathering interest has been, and is being, taken out all the time and replaced with government bonds. This is the "investment and interest" that is in the fund. Government bonds are simply IOUs which the government hopes to be able to repay someday. Because it is government and because it involves millions of people, not just ten, the whole scheme has been successfully camouflaged from most of its victims.

Fiat Money

Governments have another tool they can use to hide their scheme, however. The government, unlike Gunch, can control the money supply. So governments can pay out by "printing" money. Of course this extra money they have created out of nothing is inflation and causes prices to go up and makes all the money the friends have buy less than it did before. But the friends do not understand this point either. So again, the results are not so obvious to everyone. But the scheme will inevitably either fail or cost many millions of dollars each year to the new young working people coming into the scheme.

The tragedy of this whole thing is that the American people have been so thoroughly duped by this magic. They have always had great faith in private savings and trust funds and insurance when conducted by private business and they never saw the difference between these private funds and the government's magical scheme. But an insurance "fee" which has risen from 3 per cent in the 1930's to almost 12 per cent in the 1970's should say something. That doesn't just mean more money, it also means a bigger share of all the money. Can it be that, soon, instead of everybody supporting somebody, we will have a situation of nobody supporting everybody?

IDEAS ON LIBERTY

A Doubtful Medium

AS MONEY is the sinews of every business, the introducing of a doubtful medium – and forcing it into currency by penal laws – must weaken and lessen every branch of business in proportion to the diminution of inducement found in the money.

PELATIAH WEBSTER

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The Search for an Ideal Money

HENRY HAZLITT

FOR MORE THAN A CENTURY economists have toyed with the idea of designing or inventing an ideal money. So far no two of them seem to have precisely agreed on the detailed nature of such a money. But they do seem at the moment to agree on at least one negative point. I doubt that there is any economist today who would defend the international or American monetary system just as it is. No one openly defends the violent daily and hourly fluctuations in exchange rates, the steadily increasing unpredictability of future import, export, or domestic prices. Every newspaper reader fears that commodity prices will be higher next year and still higher the year after that. Even the man in the street, in brief, senses that the world is drifting toward monetary chaos.

But concerning the remedy, we find little agreement. Inflation is bad, some agree. Yes; but it isn't as bad as depression and unemployment; and at least it puts off those greater evils, so we must have just a little more inflation as long as these evils threaten us. Inflation is bad, others agree; but it has nothing to do with the monetary system. Rising prices are brought about by the greed and rapacity of sellers; they could promptly be stopped by price controls. Or, inflation is bad, still others concede; and yes, it is brought about by the increase in the quantity of money and credit.

Mr. Hazlitt, noted economist, journalist and author, here examines perhaps the most important question facing us today.

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But this is not the fault of the monetary system itself, but of the blunders and misdeeds of the politicians or the bureaucrats in charge of it.

Even those who admit that there is something wrong with the monetary system itself cannot agree on the reforms needed in that system. Scores of such reforms have been proposed.

The reformers, however, tend to fall into two main groups. One of these would have nothing to do with a gold, a silver, or any other commodity standard, but would leave the issuance and control of the currency entirely in the hands of the State. The other group would return to some form of the gold standard.

Each of these two groups may again be divided into two schools. In what I shall call the statist or paper-money group, one school would leave everything to the day-to-day discretion of government monetary authorities, and the other would subject these authorities to strict quantitative controls. And in the gold group, likewise, one school would allow discretion, within vague but wide limits, to private bankers and government authorities, while the second would impose severe and definite limits on that discretion.

So we have, then, four main schools of monetary theorists. Nearly every currency proposal can be classified under one of them.

Paper Money — No Controls

Let us begin with School One, the paper-money statists, who would leave the power of controlling the nature, quantity and value of our money solely in the hands of the politicians in office or the bureaucrats they appoint. This is the worst imaginable monetary system, but it is the one that prevails nearly everywhere in the world today. It has brought about practically universal inflation, unprecedented uncertainty, and economic disruption.

None of this is accidental. It was built into the system deliberately adopted at a conference of 44 nations at Bretton Woods in 1944, under the guidance of Harry Dexter White of the U.S. and Lord Keynes of England. The ostensible purpose of that conference was to increase "international cooperation" and — believe it or not — to "stabilize" currencies and exchange rates.

The chief architects sincerely believed (though they did not as openly avow) that this end could best be achieved by phasing gold out of the monetary system. So they put the world, in effect, not on a gold but on a dollar standard. The value of every other currency

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was to be maintained by making it convertible into the American dollar at a fixed official exchange rate.

The system still had one tie to gold. The dollar itself was to be kept convertible into that metal at $35 an ounce. But this tie was weakened in two ways. Other countries could keep their currencies stabilized in terms of the dollar, not through the operations of a free foreign exchange market (as under the pre-World War I gold standard) but by government sales or purchases of dollars – in other words by government pegging operations. And dollars were no longer convertible into gold on demand by anybody who held them; they were convertible only by foreign central banks. The U.S. could even (off-the-record) use its great political and economic power – which in time it did – to indicate to any central bank with the effrontery to ask for gold that this was not considered a friendly act.

So the artificial stability that the Bretton Woods system was able to maintain for a few years was not the result of any real attempt by each country to keep its own currency sound – by refraining from excessive issuance of money and credit – but of government pegging operations and gentlemen's agreements not to upset the apple cart.

This arrangement proved, in the end, unwise, unsound, and unstable. The system was able to maintain the appearance of stability only by the stronger currencies constantly rushing to the rescue of the weaker. The U.S., say, would rush in and lend Britain millions of dollars, or buy millions of pounds. It would do the like for other currencies in crisis. But using the stronger currencies to support the weaker only weakened the stronger currencies. When the U.S. Treasury bought millions of pounds with dollars, it in effect got these dollars by printing them.

And so when the dollar itself, as the result of our own recklessness, began to turn bad, and when we went off the gold standard openly in August, 1971, other nations were affected. Germany, for instance, under the terms of the Bretton Woods agreements, had to buy billions of dollars to keep the D-mark from going above its official parity. And where did Germany get the billions of marks necessary to buy the billions of dollars? Why, by printing them.

So the faster-inflating nations almost systematically exported their inflations to the slower-inflating nations. And this almost systematically brought the world toward its present inflationary chaos.

True, the nations with stronger

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currencies, even when they felt obliged by their Bretton Woods agreement to buy weaker currencies, did not *have* to increase their own money supply to buy them. Neither Germany nor any other nation that acquired dollars *had* to use the dollars as added central bank "reserves" against which they could issue still more of their own currency. They could have "sterilized" their reserves of dollars. Or they could have reduced their other government expenditures correspondingly when they felt obliged to buy dollars, or raised the amount by added taxation, instead of simply printing more D-marks or whatever. But these would have been very difficult decisions. They might have endangered the tenure of the governments that made them. What they chose seemed under the circumstances the path of least resistance.

What has to be made crystal clear, if we are to lay the foundations for any permanent sound monetary reform, is that the present worldwide inflationary chaos is not a mere accident. It is not something that has happened in spite of the wonderfully modern and enlightened International Monetary Fund system. It is something that has happened precisely *because* of that system. It is, in fact, its almost inevitable result.

Steady Breakdown

It was precisely the kind of "international cooperation" it set up that led to its final breakdown. The countries whose policies were chronically leading them into currency crises should have been obliged to pay the penalty. The faltering currencies should not have been rescued by the central banks of other countries. It was exactly because the soft-currency countries knew that an American or international safety net would be almost automatically spread out to save them that they chronically got themselves into more trouble.

As it was, the system kept breaking down anyway, but there was a sort of open conspiracy to ignore its fundamental unsoundness. In September, 1949, the British pound was devalued by 30 per cent, from $4.03 to $2.80. When this happened some 25 other countries devalued within a single week. In November, 1967 the British pound was devalued once more, this time from $2.80 to $2.40. There have been in fact hundreds of devaluations of currencies in the International Monetary Fund since it opened for business in 1946. In its Monthly Bulletin the Fund has printed literally millions of statistics a year, but it has steadfastly refused, up to now, to publish one figure – the total number of these devaluations.

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Enough of this. It should no longer be necessary to prove how bad the Bretton Woods system turned out to be. Few people, aside from the bureaucrats whose jobs are at stake, would seriously try to glue it together again. The system is dead. Unfortunately the corpse has not been buried.

The Monetarists

Let us turn to the next candidate – the proposals of the so-called monetarists. Two things may by said in favor of the monetarists. First, they do recognize the close connection between the quantity of money and the purchasing power of the monetary unit. And second, they do acknowledge the importance of imposing strict and explicit limits on the issuance of money. But there are serious weaknesses both in their factual assumptions and in their policy proposals.

It is true that there is a close relation between the outstanding supply of money and the buying power of the individual monetary unit. But it is not true that this relation is inversely proportional or in any other way fixed and dependable. Nor is it true that there is any fixed "lag" between an increase of a given percentage in the "growth" of the money supply and an increase of the same percentage in prices. The statistics on which this conclusion is based are at best inadequate. They do not cover enough currencies over long enough periods.

What happens during a typical inflation, for example, is that in its early stages commodity prices do not rise as fast as the supply of money is increased and in its later stages prices rise much faster than the supply of money is increased.

Monetarists will dismiss this whole comparison as unfair and irrelevant. They do not regard themselves as proposing inflation at all. To them inflation is *defined* not as an increase in the money supply, but only as a rise in prices. And their proposal, as they see it, is to increase the stock of money 3 to 5 per cent a year *just to keep the price "level" from falling*. They propose an annual increase in the money stock merely to compensate for an expected annual increase of 3 per cent or more in the "productivity" of the economy.

The monetarists' proposal rests on a false factual assumption. There is no automatic and dependable annual increase in "productivity" of 3 per cent or any other fixed rate. The increase in productivity that has occurred in the U.S. in recent years is the result of saving, investment, and technical progress. None of these is automatic. In fact, in the last two

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years or so, the usual "productivity" measures have actually been declining.

Wholly apart from the formidable mathematical and statistical problems involved, which space does not permit me to go into, the maintenance of the price "level" is a dubious goal. It is based on the assumption that falling prices are somehow "deflationary," and that in any case they tend to bring about recession. This assumption is questionable. When the stock of money is not increased, falling prices are a normal result of increased production and economic progress. They need not bring recession, because the falling prices are themselves the result of falling production costs. Real profit margins are not reduced. Money wage-rates may not increase, but real wages will increase because the same money will buy more. Falling prices with continued or rising prosperity have occurred again and again in our history.

Abuses of Union Power

In our present world of powerful and aggressive labor unions, with legally built-in coercive powers, the monetarists do have a legitimate fear that such unions will not be satisfied with increased purchasing power for the same money wages. In that case, when such unions ask and get excessive wage-rates, they may bring on unemployment and recession. But this danger will exist under any monetary system whatever, as long as we retain our present one-sided labor laws and union ideology.

The central and fatal flaw of the monetarist proposal is its extreme political naivete. It puts the power of controlling the quantity, the quality, and the purchasing power of our money entirely in the hands of the State – that is, of the politicians and bureaucrats in office.

I am tempted to add that it leaves this power entirely to the *discretion,* the arbitrary caprice, of the temporary holders of office in the State. The monetarists would deny this. They would limit the discretion of the monetary managers, they contend, by a strict rule. The managers would be ordered to increase the stock of money by only 2, or 3, or 4, or 5 per cent per year; and this figure would be written into the law, or into the Constitution.

It is a sign of the monetarists' own vacillation that they have never quite decided whether this figure should be a month-to-month bureaucratic goal, or embodied in a law, or nailed into the Constitution. Nor have they ever definitely decided whether the figure itself should be 2 or 3 or 4 or 5. They can apparently hold their ranks together only by remaining vague.

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Continuous Political Pressure

It is obvious that once the premises of this system were adopted there would be continuous political pressure for inflation. Those who contended that an annual increase of 2 per cent in the money stock would be enough would constantly have to combat the fears of their colleagues that this might be too low, and threaten to bring on recession. The 3 percenters, again, would have to fight a ceaseless rearguard action against the advocates of 4 per cent, or these in turn against the champions of 5 per cent. And so ad infinitum. Every time a recession seemed imminent, it would be blamed on the lowness of the existing rate of money increase. Agitation would be resumed to boost it.

None of this is a figment of my imagination. It is occurring today. On February 20, 1975, Henry Ford II, in presenting the disappointing annual report of his motor company, emphasized the need of measures to "assure strong recovery." Among these, he stipulated: "The Federal Reserve must raise the monetary growth rate to the range of 6 to 8 per cent for a short period."

I cite this as only one among scores of examples. It was especially instructive because it came from a businessman and not from a politician.

A month later there was a far more striking illustration. On March 18 the Senate of the U.S. adopted unanimously, 86 to 0, a resolution urging the Federal Reserve Board to expand the money supply in a way "appropriate to facilitating prompt economic recovery." It also asked the board to consult with the House and Senate Banking Committee every six months on "objectives and plans" concerning the money supply. This was in effect an order to the Fed to continue inflating, and presumably to increase the rate of inflation. It also put the Fed on notice that whatever it may have previously supposed, it is not independent, but is subject to the directions of the politicians in office. The substance of this resolution was later adopted by the full Congress.

The monetarists' program would inevitably make the monetary system a political football. What else could we expect? Isn't it the height of naivete deliberately to put the power of determining the money supply in the hands of the State, and then expect existing officeholders not to use that power in the way they think is most likely to assure their own tenure of office?

The first requisite of a sound monetary system is that it put the least possible power over the

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quantity or quality of money in the hands of the politicians.

This brings us to gold. It is the outstanding merit of gold as the money standard that it makes the supply and the purchasing power of the monetary unit independent of government, of office holders, of political parties, and of pressure groups. The great merit of gold is precisely that it is scarce; that its quantity is limited by nature; that it is costly to discover, to mine, and to process; and that it cannot be created by political fiat or caprice. It is precisely the merit of the gold standard, finally, that it puts a limit on credit expansion.

Fractional or Full Reserve?

But there are two major kinds of gold standard. One is the fractional-reserve system, and the other the pure gold or 100 per cent reserve system.

The fractional-reserve system is the one that developed and prevailed in the Western world in the century from 1815 to 1914. It is what we now call the classical gold standard. It had the so-called advantage of elasticity. And it made possible — we might justly say it was responsible for — the business cycle, the recurrent round of prosperity and recession, of boom and bust.

With the fractional-reserve system what typically happened is that in a given country — let us say Ruritania — borrowers would be given credit by the banks, in the form of demand deposits, and they would launch upon various enterprises. The new money so created, perhaps after taking up any slack in business and employment, would increase Ruritanian prices. Ruritania would become a better place to sell to, and a poorer place to buy from. The balance of trade or payments would begin to turn against it. This would be reflected in a fall in the exchange rate of the Ruritanian currency until the "gold export point" was reached. Gold would then flow out to other countries. In order to stop it, interest rates in Ruritania would have to be raised. With a higher interest rate or a smaller gold base, the volume of currency would be contracted. This would often mean a deflation or a crisis followed by a slump.

In brief, the gold standard with a fractional-reserve system tended almost systematically to bring about the cycle of boom and slump.

Under such a system, there is constant political pressure to reduce interest rates or the reserve requirements so that credit expansion — i.e., inflation — may be encouraged or continued. It is supposed to be the great advantage of a fractional-reserve sys-

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tem that it allows credit expansion. But what is overlooked is that, no matter how long the required legal reserve is set, there must eventually come a point when the permissible legal credit expansion has been reached. There is then inevitable political pressure to reduce the percentage of required reserves still further.

This has been the history of the system in the United States. The effect – and partly the intention – of the Federal Reserve Act was enormously to increase the potential volume of credit expansion. The required reserves for member banks were reduced under the new Federal Reserve Act from a range of 15 to 25 per cent for the previous national banks to 12 to 18 per cent for the new Federal Reserve member banks. In 1917 the required reserves for member banks were reduced still further to a range of 7 to 13 per cent.

Pyramiding Credit

But on top of the inverted pyramid of credit that the member banks were allowed to create, the newly established Federal Reserve Banks, which now held the reserves of the member banks, were permitted to erect a still further inverted credit pyramid of their own. The Reserve Banks were required to carry only a 35 per cent reserve against their deposits and a 40 per cent gold reserve against their notes.

Later the Federal Reserve authorities became more strict in imposing reserve requirements on the member banks (they raised these sharply beginning in 1936, for example). But they continued to be very lenient in setting their own reserve requirements. Between June of 1945 and March of 1965 the reserve requirements were reduced from 35 and 40 per cent to a flat 25 per cent. And then they were dropped altogether.

So much for history. What of the future?

If the world, or at least this country, ever returns to its senses, and decides to re-establish a gold standard, the fractional-reserve system ought to be abandoned. If by some miracle the U.S. government were to make this decision tomorrow, it could not of course wipe out the already existing supply of fiduciary money and credit, or any substantial part of it, without bringing on a devastating and needless deflation. But the government would at least have to refrain from any further increase in the supply of such fiduciary currency. Assuming that the government were then able to fix upon a workable conversion rate of the dollar into gold – a rate that was sustainable and would not in itself lead to either inflation or de-

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flation – the U.S. could then return to a sound currency and a sound gold basis.

But in the world as it has now become – sunk in hopeless confusion, inflationism, and demagogy – the likelihood of any such development in the foreseeable future is practically nil. The remedy I have suggested rests on the assumption that our government and other governments will become responsible, and suddenly begin doing what is in the long-run interest of the whole body of the citizens, instead of only in the short-run interest – or apparent interest – of special pressure groups. Today this is to expect a miracle.

But the outlook is not hopeless. I began by pointing out that for more than a century individual economists have tried to design an ideal money. Why have they not agreed? Why have their schemes come to nothing? They have failed, I think, because they have practically all begun with the same false assumption – the assumption that the creation and "management" of a monetary system is and ought to be the prerogative of the State.

This has become an almost universal superstition. It is tantamount to agreeing that a monetary system should be made the plaything of the politicians in power.

The proposals of the would-be monetary reformers have failed, in fact, for *two* main reasons. They have failed partly because they have misconceived the primary functions that a monetary system has to serve. Too many monetary reformers have assumed that the chief quality to be desired in a money is to be "neutral." And too many have assumed that this "neutrality" would be best achieved if they could create a money that would lead to a constant and unchanging "price level."

This was the goal of Irving Fisher in the 1920's, with his "compensated dollar." It is the goal of his present-day disciples, the "monetarists," and their proposal for a government-managed increase in the money supply of 3 to 5 per cent a year to keep the "price-level" stable.

I believe that this goal itself is a questionable one. But what is an even more serious and harmful error on their part is the method by which they propose to achieve this goal. They propose to achieve it by giving the power to the politicians in office to manipulate the currency according to the formula prescribed in advance by the monetarists.

Self-Serving Politicians

What such reformers fail to recognize is that once the politicians and their appointees are granted

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such powers, they are less likely to use them to pursue the objectives of the reformers than they are to pursue their own objectives. The politicians' own objectives will be those that seem best calculated to keep them in power. The particular policy they will assume is most likely to keep them in power is to keep increasing the issuance of money; because this will (1) increase "purchasing power" and so presumably increase the volume of trade and employment; (2) keep prices going up as fast as union pressure pushes up wages, so that continued employment will be possible; and (3) give subsidies and other handouts to special pressure groups without immediately raising taxes to pay for them. In other words, the best immediate policy for the politicians in power will always appear to them to be inflation.

In sum, the belief that the creation and management of a monetary system ought to be the prerogative of the State – i.e., of the politicians in power – is not only false but harmful. For the real solution is just the opposite. It is to get government, as far as possible, out of the monetary sphere. And the first step libertarians should insist on is to get our government and the courts not only to permit, but to enforce, voluntary private contracts providing for payment in gold or in terms of gold value.

A Movement Toward Gold

Let us see what would happen if this were done. As the rate of inflation increased, or became more uncertain, Americans would tend increasingly to make long-term contracts payable in gold. This is because sellers and lenders would become increasingly reluctant to make long-term contracts payable in paper dollars, or in irredeemable money-units of any other kind.

This would apply particularly to international contracts. The buyer or debtor would either have to keep a certain amount of gold in reserve, or make a forward contract to buy gold, or depend on buying gold in the open spot market with his paper money on the date that his contract fell due. In time, if inflation continued, even current transactions would increasingly be made in gold.

Thus there would grow up, side by side with fiat paper money, a *private* domestic and international gold standard. Each country that permitted this would then be on a dual monetary system, with a daily changing market relation between the two monies. And there would be a private gold system ready to take over completely on the very day that the govern-

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ment's paper money became absolutely worthless – as it did in Germany in November 1923, and in scores of other countries at various times.

A Private Gold Standard?

Could there be such a private gold standard? To ask such a question is to forget that history and prehistory have already answered it. Private gold coins, and private gold currencies, existed centuries before governments decided to take them over – to nationalize them, so to speak. The argument that the kings and governments put forward for doing this – and it was a plausible one – was that the existing private coins were not of uniform and easily recognizable size, weight, and imprint; that the fineness of their gold content, or whether they were gold at all, could not be easily tested; that the private coins were crude and easily counterfeited; and finally that the legal recourse of the receiver, if he found a coin to be underweight or debased, was uncertain and difficult. But, the kings went on to argue, if the coins were uniform, and bore the instantly recognizable stamp of the realm, and if the government itself stood ever ready to prosecute all clippers or counterfeiters, the people could depend on their money. Business transactions would become more efficient and certain, and enormously less time-consuming.

Still another specious argument for a government coinage applied especially to subsidiary coins. It was impossible, it was contended, or ridiculously inconvenient, to make gold coins small enough for use in the millions of necessary small transactions, like buying a quart of milk or a loaf of bread. What was needed was a subsidiary coinage, which represented halves, quarters, tenths, or hundredths of the standard unit. These coins, regardless of what they were made of, or what their intrinsic value might be, would be legally acceptable and convertible, at the rates stamped on them, into the standard gold coins.

It would be very difficult, I admit, to provide for this with a purely private currency, with everybody having the legal power to stamp out his own coins and guarantee their conversion by him into gold. A private coinage system might conceivably be able to solve this problem, but I confess I personally have been unable to think of any solution that would not be complicated, cumbersome, or undependable.

It is clear, in short, that a government-provided or a government-regulated coinage has some advantages. But these advantages

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are bought at a price. That price seemed comparatively low in the nineteenth century and until 1914; but today the price of government control of money has become excessive practically everywhere.

The basic problem that confronts us is not one that is confined to the monetary sphere. It is a problem of government. It is in fact *the* problem of government in every sphere. We need government to prevent or minimize internal and external violence and aggression and to keep the peace. But we are obliged to recognize that no group of men can be completely trusted with power. All power is liable to be abused, and the greater the power the greater the likelihood of abuse. For that reason, only minimum powers should be granted to government. But the tendency of government everywhere has been to use even minimum powers to increase its powers. And any government is certain to use great powers to usurp still greater powers. There is no doubt that the two great World Wars since 1914 brought on the present prevalence of the quasi-omnipotent State.

But the solution of the overall problem of government is beyond the province of this article. To decide what would be the best obtainable monetary system, if we could get it, would be a sufficiently formidable problem in itself. But a major part of the solution to this problem, to repeat once more, will be how to get the monetary system out of the hands of the politicians. Certainly as long as we retain our nearly omnipotent redistributive State, no sound currency will be possible.

IDEAS ON LIBERTY

Start When Ready

ANYONE can begin the practice of freedom whenever he chooses to do so. It is easy, and one need not wait upon other persons to agree before he begins. No committee resolutions or elections or laws are needed for a person to begin the practice of freedom. One need merely resolve not to impose his will — legally or illegally — upon his peaceful fellow men in their religions, their economic theories, their attitudes, their morals, their mores, or whatever. And then start to practice it.

DEAN RUSSELL

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RONALD F. COONEY

A Freedom Under Fire

EXCEPT for perhaps the question of whether or not to legalize abortion, no public issue of recent years has absorbed more interest or stirred the violent emotions of thoughtful people (and of those less so) than the prickly matter of gun control. In the editorial pages of newspapers, before the committees of Congress, the battle has been joined. As in the abortion controversy, the lines have been clearly and firmly marked between the combatants. On one side stand those who see a comprehensive and strictly enforced national gun law as the *sine qua non* in an effective campaign to halt a crime rate raging out of control. On the other side stand those who are implacably opposed to any attempt to restrict, for no matter how high-minded an end, what they regard as their right to possess firearms.

The deliberative person, if he is at the same time a believer in freedom, will approach the problem cautiously and with an open mind. An automatic conscript to neither camp, he should be willing to test the strength of the arguments on both sides, desiring to find the bedrock of truth wherever it lies below the swirling eddies of passion. He may discover at last that here, as in a good many such disputes, the issues are as muddy as they are significant.

One wonders if the debate, which too often takes the form of dueling with shibboleths, is ultimately about guns and their control at all. Superficially, of course, it is. But over it loom much larger concerns, concerns bearing directly on the future of freedom: How

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much crime is allowable in a free society? At what point is the survival of the society threatened by lawless acts? How free can the society hope to remain if the system of law upon which it rests is routinely mocked, not to say openly flouted, by its people? It is important to ask questions like these even if one does not answer them.

For their part, the proponents of gun legislation argue that we have now reached a stage, if we have not already passed it, at which crime, especially violent crime, poses — to borrow a phrase from Mr. Justice Holmes — a clear and present danger to American society. They point to recent surveys indicating that in over half of the murders committed in the United States a gun, often a cheap, easily obtainable handgun of the so-called "Saturday-Night Special" variety, was the weapon used. The present laws are ill-equipped to deal with the crisis. And the answer, so the gun-control people have it, would be the enactment of a Federal gun law.

There is a divergence of opinion concerning what such a law should require, presuming it should be enacted at all. Some advocates have proposed the registration of all firearms in the country. Others, lately more vocal, have advanced the idea that nothing short of outright prohibition will suffice. The first idea would entail some restriction of individual freedom; the second, however, denies the particular freedom out of hand. It is the second that interests us here.

Ideally, the scheme of outlawing the ownership of guns would, by removing the weapons from everyone's hands, remove them from the hands of criminals who use them to commit acts of violence. It would further insure that the possession of guns, handguns in particular, far from being a right enjoyed by the many, would then be a privilege of the few, restricted to such law-enforcement agencies as police forces. Thus, the gun-controllers hope, the rate and ferocity of crime will be greatly diminished.

Assume for the moment that no infringement of individual liberty is involved. Does this proposal, or for that matter the registration plan, have any utilitarian value? From the standpoint of expediency, does it seem feasible? The pro-legislation group, to boost the claim that gun-control is needed in the United States, cite the severe gun laws of European countries and those nations' comparatively lower crime rates, and argue not altogether convincingly that there is a cause and effect relationship between them. They take for granted that the one is

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due to the existence of the other. They tend to ignore the countless other factors, not the least of which is the relative homogeneity of European populations, that could just as readily account for the fewer number of crimes. What is more, they offer no irrefutable evidence that the harsh gun laws are *the* single factor responsible for bringing about a reduction in crime.

One estimate of the probable effectiveness of gun-control may be provided by the experiment of Jamaica, examined in a recent segment of the C.B.S. program *60 Minutes*. Faced with an apparently incurable epidemic of gun-related crime, the government of Jamaica instituted a new and drastic system of treatment. For the past year or so sentences of up to life-imprisonment for the mere possession of a gun have been handed down by the Jamaican Gun Court. This and other equally Draconian measures did in fact bring about a temporary reversal in the escalation of crime. There are signs now, however, that it is again on the rise. The cost to the Jamaican people, in terms of reduced civil liberties added to the already existing burden of crime, can hardly be calculated.

Of course, the limited success of Jamaica's gun law is not conclusive proof that a similar plan would have the same fate in this country. But it may show the shortsightedness of this specific approach to curbing crime. It has the harmful side-effect of punishing with equal vigor the criminal and the innocent person who uses his gun for legitimate sporting purposes or self-protection. A sounder plan, and one which has yet to be endorsed by the anti-gun contingent, would levy heavier sentences for crimes committed with a gun and remove the stigma from those who obey the law.

One must have a commodious faith indeed to believe that the criminal, once disarmed, will go and rob, rape, and murder no more, or that the very element of society in whose best interest it is to ignore gun-control laws will accept them and obey them. The ordinary law-abiding citizen is doubly vulnerable if he obeys the law and surrenders the gun with which he protects his life and property because *other* laws have failed, or he feels they have failed, to protect them. Should he choose to disregard the law he, and all like him who were not criminals before, become *de facto* criminals in the eye of the courts, a situation not unlike Prohibition, when a bad law enacted with the best intentions did less to stop drinking than to shatter respect for law itself.

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The simplistic view of criminal human nature held by the pro-legislation group is exceeded only by its unshakeable conviction in the talismanic properties of coldly mechanical statute. They leave the distinct impression that guns, and not the persons wielding them, are responsible for crime and that by banning guns through legislative fiat one is striking at the heart of the problem. Admittedly, this would be a simpler and tidier world if such things could be, but it is far easier to outlaw guns than to wish away the evil impulses which guns so often serve.

Any free society worthy of the name does not deny the reality of these impulses, does not dispute that there is a darker side of man. Still, the truly free society is less engaged in reforming man—brave and heroic aspiration—than in allowing him to realize his potential for nobility and hence to reform himself. No one claims that freedom showers unmixed blessings, nor that it does not extract a toll. Ortega, in the chapter titled "The Greatest Danger, The State" of his seminal work, *The Revolt of the Masses*, touches upon this point:

> When, about 1800, the new industry began to create a type of man—the industrial worker—more criminally inclined than traditional types, France hastened to create a numerous police force. Towards 1810 there occurs in England, for the same reasons, an increase in criminality, and the English suddenly realize that they have no police. The Conservatives are in power. What will they do? Will they establish a police force? Nothing of the kind. They prefer to put up with crime, as well as they can. "People are content to let disorder alone, considering it the price they pay for liberty." "In Paris," writes John William Ward, "they have an admirable police force, but they pay dear for its advantages. I prefer to see, every three or four years, half a dozen people getting their throats cut in the Ratcliffe Road, than to have to submit to domiciliary visits, to spying, and to all the machinations of Fouché." Here we have two opposite ideas of the State. The Englishman demands that the State should have limits set to it.

It is almost a cliche to say that the freer a country the more it is bedeviled by crime. The advocates of gun-control, whose motives, let us not forget, are admirable, have been unable nonetheless to show by what process of regulation the inevitable diminution of freedom—and no loss of that increasingly rare commodity is unimportant—will be outweighed or equalized by the boon of a hypothetically more lawful society. And they cannot show that the society born anew, however idyllic, would be worth the sacrifice.

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POLICE POWER:

Sovereignty's Sledgehammer

RIDGWAY K. FOLEY, JR.

SOVEREIGNTY may be defined as the ultimate justification for the application of coercive force by the organized state to individuals residing within the territorial perimeters of that political unit or linked to it by virtue of birth, allegiance, contract or custom.[1]

The state's commands divide into three major categories of power: taxation, eminent domain, and police.[2]

Taxation connotes the power of government to extract coerced or involuntary contributions of income or property from residents or subjects for the support of the state and its undertakings.[3]

Eminent domain marks the attribute or power of a sovereign state to appropriate private property to particular uses against the owners' consent in order to promote public welfare (usually after application of procedural "due process" and the payment of "just" compensation, at least in the United States).[4]

Because the ordinary citizen encounters these two types of norm-

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1 See Foley, Ridgway K., Jr., "A Defense of Sovereignty: The Territorial Imperative" (unpublished manuscript).

2 Willis, Hugh Evander, *Constitutional Law of the United States* (The Principia Press, Bloomington, Indiana 1936) 224.

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3 See *Attorney General v. City of Eau Claire*, 37 Wis 400, 438; *Linnell v. State Dept. of Finance*, 21 Cal Rptr 785, 788, 203 Cal App 2d 465 (1962) for other realistic definitions.

4 For similar definitions, see *Jeffress v. Town of Greenville*, 154 NC 490, 70 SE 919, 921 (1911), *Consumer's Gas Trust Co. v. Harless*, 131 Ind 446, 450, 29 NE 1062 (1892); *Briegel v. Briegel*, 307 Pa 93, 160 A 581, 584 (1931).

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ative rules on a regular basis, individuals generally possess at least a vague comprehension of the exercise of government force in these arenas. Few, if any, persons escape entirely from the net of direct taxation flung like a blanket over the nation; April 15 serves as an annual reminder of this extensive power, as does the periodic withholding which siphons off portions of current income. While somewhat less widely used, the power of eminent domain touches most neighborhoods and inhabitants, at least indirectly, as urban renewal, land use restriction, and right-of-way displacements work their gentle magic on the countryside.

Dissimilarly, the police power lurks pervasively in the background, quite as real and more intense than its companion powers, but less well recognized by the persons affected by its scope. Nevertheless, the saturating nature and incredible fundamental depth and sway of the police power render it the most dangerous (if least well known) of governmental powers. Indeed, it forms the theoretical base for all regulatory retrictions on personal liberty. This essay proposes to isolate and analyze the concept of police power, hopefully pointing the way to a limitation upon the scope of state edicts.

Police Power Defined

Unlike many essential postulates difficult to articulate but relatively easy to define by example, police power poses quite the converse problem: it may be defined with relative ease and general agreement; only the application remains difficult by virtue of the open-textured nature of the tenet. Without applying the appellation "police power," Chief Justice Roger Taney spoke of that aspect of sovereignty in *Charles River Bridge* v. *Warren Bridge*, when he upheld the power of the state of Massachusetts to erect a competing bridge across the Charles River to the detriment of a pre-existing charter:

> . . . But the object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed, that the government intended to diminish its power of accomplishing the end for which it was created. . . .[5]

In the following decade, the same jurist defined police powers in the *Licensee Cases*:[6]

> . . . But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the

[5] 11 Pet. 420, 12 U.S. 496, 507 (1837).

[6] *Thurlow v. The Commonwealth of Massachusetts*, etc. 5 How. 504, 583, 16 U.S. 513, 525 (1846).

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extent of its dominion. And whether a state passes a quarantine law, as a law to punish offenses, as to establish courts of justice, or requiring certain instruments to be recorded, as to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates . . .

From these roots, the common definition of police power has evolved to the power to govern,[7] the power inherent in every sovereignty to control men and things under which authority the state may, within constitutional limitations, prohibit all things hurtful to the comfort, safety, and welfare of society and prescribe regulations to promote the public health, morals, safety, and order, and to add to the general public convenience, prosperity and welfare.[8]

The Meaning and Sweep of Police Power

Police power, a most elastic term,[9] inheres in the concept of sovereignty[10] independent of the existence of any doctrine of emergency.[11] Sovereignty provides the ultimate justification for the general exercise of governmental coercion, while the police power represents the specific concept verifying and validating application of that force to myriad special instances. The revenue power of taxation and the land control power of eminent domain serve as the scalpels of sovereignty, slicing away bits of human liberty in the name of public necessity; police power is sovereignty's sledgehammer, pummeling the subjects into an orderly, if restricted, pattern of conduct.

A common myth prevails to the effect that, in the United States of America, at least, the citizenry enjoys a limited government. In theory, the United States Constitution does limit the powers of the national government in certain specific particulars. In practice, the Federal government possesses an inherent police power rendering such an implied limitation quite unreal.[12] Doubtless the Framers of the Federal Constitu-

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7 *Gray v. Reclamation District No. 1500*, 174 Cal 622, 163 P 1024, 1032 (1917).

8 See *State v. Cromwell*, 72 ND 565, 9 NW2d 914, 191 (1943); 16 CJS 889, *Constitutional Law* § 174; *State of Washington v. MamLock*, 58 Wash 631, 109 P 47 (1910).

9 *State v. Wisconsin Telephone Co.*, 169 Wis 198, 172 NW 225, 226 (1919).

10 *Allen B. Dumont Laboratories v. Carroll*, 184 F2d 153, 156 (3rd Cir 1950).

11 *In re North New Jersey Title Ins. Co.*, 120 NJ 148, 184 A 420 (1936).

12 Professor Willis refers to the lack of a Federal police power as a "common heresy," Willis, Note 2, op cit p. 226.

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tion intended to limit such police powers by means of the largely forgotten Ninth Amendment:

Rights Retained by People. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.[13]

Two centuries of judicial review and legislative encroachment have transmuted the Ninth Amendment into a virtual nullity.[14]

In this stance, the eminent jurist, Joseph Story, can accurately report that all property and all vested individual rights are subject to such police regulations as the legislature (government in the law-making sense) may establish with a view to protect the community.[15] Professor Willis illustrates both the sweep of the power and its inherent restrictions:

. . . The police power is the legal capacity of sovereignty, as one of its governmental agents, to delimit the personal liberty of persons by means which bear a substantial relation to the end to be accomplished for the protection of the social interests which reasonably need protection...[16]

. . . There are two main requirements for a proper exercise of the police power: (1) there must be a social interest to be protected which is more important than the social interest in personal liberty, and (2) there must be, as a means for the accomplishment of this end, something which bears a substantial relation thereto.[17]

The Location of Police Powers in a Federal System

The term "police power," referring to an inherent and largely disguised body of authority, does not appear in the United States Constitution nor in most state charters:

. . . Although the basis of the police power lies in the Constitution which regards the public welfare, safety, and health of the citizens of the state, and although it may be given to the people of the state by the constitution, the power exists without any reservation in the Constitution, being founded on the duty of the state to protect its citizens and provide for the safety and good order of society.[18]

It seems likely, however, that the reserved powers mentioned in the Tenth Amendment to the United States Constitution refer, if not by name at least in substance, to state police powers:

Powers reserved to states or people. The powers not delegated to the

13 U.S. Constitution, Amendment IX.

14 See Foley, Ridgway K., Jr., "Under The Ninth Amendment, What Rights Are Reserved To The People?" (unpublished manuscript).

15 II Story (Joseph), *Commentaries on the Constitution of the United States* (5th ed, Bigelow, Little Brown & Company, Boston 1891) 700-701, § 1954.

16 Willis, Note 2, op cit p. 716.

17 *Ibid*, p. 728.

18 16 CJS 893-894, *Constitutional Law* §175a.

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United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[19]

Reservation "to the People" has faded from view; residual powers now inhere in the state under the guise of police power. Thus, the concept of limited government under the American Constitutional system proves largely illusory. History from 1789 tells a continuing tale of a national government once strictly limited, so limited in fact that many believed the Bill of Rights to be unnecessary, grasping additional powers under the guise first of the interstate commerce clause[20] and the necessary and proper clauses[21] and later under the general welfare clause.[22] Few would contest the fact that the powers usurped under the concept of "general welfare" or "necessary and proper" pretexts partake of a Federal police power.[23] Indeed, the language both of the Constitution and of the individual legislation or decision justifying each particular infringement upon personal liberty, coincides with the general test of police powers: those sovereign powers designed to promote public order, health, safety, morals and the general welfare of society. The draftsmen of the Federal Constitution made relatively few mistakes, considering the general imprecision of language and the inborn human surge for power, but the three clauses mentioned stand out as grievous errors, permitting easy sanction for increased restraint and reduced liberty.

State Police Powers

Concurrently with the growth of the Federal police power, the individual states enjoyed their own reserve of police powers fashioned to inhibit human freedom and creativity. While the Federal police power lay largely dormant during the first century of the Constitution,[24] one cannot surmise that the police power concept drowsed: the individual states flexed their authority in

19 U.S. Constitution, Amendment X.

20 U.S. Constitution, Art. I, § 8 cl. 3.

21 U.S. Constitution, Art. I, § 8 cl. 18.

22 U.S. Constitution, Art. I, § 8 cl. 1.

23 The history and the inherent error in the misuse of each of these clauses, viewed against the drapery of individual freedom, deserves separate treatment apart from this essay.

24 The writer has attempted to dispel the quaint notion of laissez-faire in the nineteenth century by illustrating the number of laws, enacted by state, and federal governments, which encroached upon personal freedom. See Foley, Ridgway K., Jr., "Individual Liberty and The Rule of Law", 21 *Freeman* (No. 6) 357, 373 (June 1971). See also, Hurst, James William, *Law and the Conditions of Freedom in the 19th Century United States* (U. of Wis. Press 1956) and Handler, Oscar and Mary, *The Dimensions of Liberty* (Harv. U. Press 1961).

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myriad ways, through licensing acts, internal improvements and regulatory laws.

From the outset, the two competing governmental structures collided in sporadic conflict. Normally, state licensing, franchise, and regulatory laws conflicted with Federal application of the interstate commerce clause.[25] During the post-Civil War and post-World War eras of substantive due process concepts, constitutional restrictions inhibited the *exercise* of the police power by the states but in no way eradicated or infringed upon the concept itself.[26] With the advent of increased social and economic legislation following the Great Depression of 1929, both state and Federal use of police powers have vastly increased with a concomitant loss of individual liberty.

Police Powers: Model and Reality

The imaginary model of limited government in the American Federal system deviates from reality. The deflection from truth occurs primarily as a result of the concept of police power.

The model envisions a Federal government possessing only those powers inherent in sovereign nations. Each state government is assumed to act in a like limited capacity, the limitations flowing both from the National and the particular state constitutions. All powers not specifically delegated to the state or the Federal government dwell in the individual acting human being. Man is free to do anything not prohibited by state or Federal law, and neither state nor Federal law encroaches upon voluntary action, except in the specific areas reserved in writing to the government in the fundamental charters.

Contrast reality. The government of the United States exercises all powers specifically granted to it by the Constitution and all powers implied from that document. It also exercises a National police power – the "right" to provide for order, health, safety, morals and welfare – inherent in sovereignty.[27] The National government, in theory, cannot contravene the individual rights protected by the Constitution *but*, when dealing with police powers, one must recall that where the interest of the public runs counter to that of the individual, the latter must give way unless the law can be deemed "arbitrary, capri-

25 See Corwin, Edward S., *The Constitution and What It Means Today* (Chase and Ducat rev ed, Princeton University Press 1973) 56-57.

26 Compare, Willis, note 2, *op. cit.* p. 728.

27 16 CJS 906, *Constitutional Law*, § 177.

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cious, or unreasonable."[28] (Obviously, the phrase "public interest" constitutes a mere euphemism for the personal interests of the dominant person or group; governments, societies, communities, and other non-personal organizations do not possess "interests.")[29]

At the same time, the individual states appear as the Federal government in microcosm with one important distinction: while the Federal government purports, however fallaciously, to be a government of limited powers, the states do not, for they contain the elastic police powers, the great reserve powers of each state.[30] In legal theory, the states possess all of the ordinary legislative powers exercised by the British Parliament at the time of the American Revolution except as restricted by state and Federal constitutions[31]

A Suggested Analysis of Police Power

To harmonize with the fundamental creed of maximum individual liberty and limited powers of government, any analysis of police power should restrict that doctrine to the use of community force to settle disputes which the participants cannot resolve in a voluntary manner and to prevent, deter and punish the use of force and fraud. Such a doctrine accords with the proper use of law,[32] the sound definition of sovereignty[33] and the fundamental postulate of Justice.[34]

Under the existing tenets of police power, the states may enact laws which are impolitic, harsh or aggressive without contravening the Constitution.[35] Police powers comprehend reasonable prevention (prior restraint) as well and punishment.[36] To the contrary, the state should govern under general principles of justice, leaving free action to individual men; in short, the law should tolerate no external restraints (beyond those suggested in the preceding paragraph) upon creative human action, much less countenance harsh and oppressive legislation. Man

28 *Egan v. City of Miami*, 178 So. 132 (Fla. 1938).

29 See Foley, Ridgway K., Jr., "Affected with a Public Interest" (unpublished manuscript).

30 *In Re Opinion of the Justices Alabama State Federation of Labor v. McAdory* 18 So.2d 810 (Ala. 1944), 22 So.2d 521 (Ala. 1945).

31 Burdick, Charles K., *The Law of the American Constitution* (G. P. Putnam's Sons, New York 1922) 559.

32 Foley, Note 24, *op. cit. passim.*

33 Foley, Note 1, *op. cit.*

34 Foley, Ridgway K., Jr., "In Quest of Justice" 24 *Freeman* (No. 5) 301, 302 (May, 1974).

35 *Southern Bell Tel & Tel Co. v. Town of Calhoun*, 287 Fed. 381, 386 (W.D. SC 1923). *D'Amico v. Brock* 122 Cal App2d 63, 264 P2d 120, 125 (1953).

36 See *Jung v. City of Winona*, 71 F. Supp. 558 (D. Minn. 1947).

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should remain free to develop his creative abilities through free action *sans* prior restraints; the certainty of punitive reaction adequately deters the initiation of force and fraud, with less loss of liberty than prior restraint.

Prior restraint involves its own species of danger, the danger of internal oppression. In final analysis, regulations impose the subjective value judgments of one individual or group upon other individuals or groups who may possess widely differing subjective values. One who exerts prior restraint may misapprehend the existence of danger or misconstrue the efficacious means of averting whatever risk exists; the individual human actor can better assess both hazard and means of avoidance since the lawmaker is cut from the same bolt and possesses no omnicompetence. Prior restraint encourages men holding power, for good reasons or ill, to oppress their neighbors. Limitations and diffusion of power tend to stimulate freedom.

American courts have discerned the basis for police powers in the doctrine of "public necessity"[37] and have termed it an essential element in all orderly government.[38] In fact, the Supreme Court of the United States once declared that the principle of police power corresponds to the individual's right of self-preservation.[39]

Measured by these three tests, the doctrine of police power suggested here satisfies the standard. It is *necessary,* if men are to live together in society, that aggressors be deterred from initiating force against peaceable inhabitants. Laws which prohibit the initiation of force and fraud and which punish transgressions are publicly necessary in this egard. *Orderly* living does require a control repository of community force to quell external invasion and internal strife and to settle disputes which appear voluntarily insoluble. *Self-preservation* of the residents depends upon protection from irrational and sinister men.

On the other hand, when extended to the breadth and depth currently fashionable, police powers as defined prove too much. A single necessity exists: that man

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37 *Lone Star Gas Co. v. City of Fort Worth, Tex,* 15 F. Supp. 171, 176 (N.D. Tex. 1936), rev'd. other grounds 93 F.2d 584 (5th Cir. 1937), cert denied 304 U.S. 562, 58 S. Ct. 943, 82 L.Ed. 1529 (1938), reh. den., 304 U.S. 589, 58 S. Ct. 1844, 82 L. Ed. 1549 (1938); *Jamouneau v. Harner,* 16 N.J. 500, 109 A.2d 640, 647 (1954).

38 *American Trust Co. v. McCallister,* 136 Or. 338, 347, 299 P. 319 (1931); *Alexander Co. v. City of Owatonna,* 272 Minn. 312, 24 N.W.2d 244, 250 (1946).

39 *Panhandle Eastern Pipeline Co. v. State Highway Comm,* 294 U.S. 613, 55 S. Ct. 563, 567, 79 L. Ed. 1090 (1935).

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be permitted to dwell in harmony, as free as possible to conduct his life without the introduction of force or fraud. Any imagined "public" necessity beyond this point assumes, without rational foundation, that the whole is greater than the sum of its parts, that the state exists beyond the meshing of its individual citizens.

Again, orderly government only requires impediments to initiation of aggression and deceit and the administration of justice; no one can really contend that a bridge across turgid waters can only derive from public funds. "Public necessity" and "orderly processes of government" conjure up visions of voluntary ineptitude to solve human problems.

It is not my task to explain how freedom will work in a given situation; I only know that liberty will produce a result more nearly in accord with the desires of the myriad human beings affected by, and interested in, the problem and its resolution. The "public necessity" argument implicitly decries one method of problem-solving – the freedom way – and, thereby, engages in circular reasoning where the premise becomes the conclusion.

Moreover, no government and no state possesses any "rights," including the right to self-preservation. Only individuals possess rights; any belief that a state owns rights involves a much too organic view of government. The state exists not to perpetuate itself in power but *to secure* the inalienable rights of individuals residing in that territory to life, liberty and property.[40] Once a government fails in this task, it becomes useless. At any time, the citizens in a territorial unit may correct or alter the form of government in order to better accomplish the purposes of justice. Any "right" of state self-preservation would collide with the individual's rights to continued free existence and to change or replace an existing state. Not just *governments* may change; no warrant exists to preclude residents of a given territory from establishing a new *state.*

Again, the current concept of police power envisions the use of government force to improve the social and economic conditions of the community at large, to bring about the greatest good for the greatest number of people.[41] The state possesses only destructive not creative, force and energy. It can only improve social and economic conditions by alleviating aggressive restraints upon crea-

[40] Declaration of Independence of the United States of America.

[41] *People v. Sell,* 310 Mich. 305, 17 N.W.2d 193, 196 (1945).

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tive human action. It can assure the condition for improvement – freedom for all mankind – but it cannot cause improvement.

Furthermore, the state lacks potency to determine, much less effect, "the greatest good for the greatest number." This Benthamite utilitarian dictum, so resonant in sound, can be peeled to expose a fallacious core. Good may only be determined by each individual for himself; it is a subjective value judgment, one which cannot be made by Congress or a committee.[42] Only the individual human being, living his life from internal directions, can determine his "greatest good"; only the free actions of all persons can determine the "greatest good for the greatest number." Any hedonistic calculus presupposing a legislator competent to make this determination in an objective manner betrays the breeding ground for incipient dictatorship.

The police power today exists in a broad spectrum. A legal encyclopedia accurately expresses the ambit:

> . . . It has been said that the scope of the power is as broad as the public welfare or interest thereof, that it is one of the least limitable of the powers of government, and that the police power is the broadest in scope of any field of governmental activity. Within the realm of police power the legislature may act in any manner not forbidden by the Constitution expressly or by necessary implication. It extends to all matters which concern the regulation and control of the internal affairs of the state, and almost the whole of the great body of municipal law which establishes and enforces the duties of citizens to each other is embraced within and known as the police power. A state in suppressing what it regards as a public evil may adopt any reasonable measures which it may deem necessary, and the reasonableness of a police regulation is not necessarily what is best, but what is fairly appropriate under attendant circumstances. . . .[43]

Adherence to this philosophy leads to ultimate sanction for any kind of restraint. The statist may argue that the rule of reasonableness limits arbitrary exercise of authority. But *who* determines what is reasonable? The state, through its legislative or judicial apparatus – hardly comforting to the endangered citizen losing his liberty particularly in light of the judicial rule that *presumes* every exercise of police power to be constitutionally valid.[44]

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[42] See Foley, Ridgway K., Jr., "The Concept of Value in Ethics and Economics" 25 *Freeman* (No. 2) 115 (February 1975).

[43] 16 CJS 898-899, *Constitutional Law* § 175 b.

[44] *Goldblatt v. Hempstead,* 369 U.S. 590, 82 S. Ct. 987, 99,1, 8 L. Ed.2d 130 (1962).

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It remains to review in cursory fashion the objects to which the police power is often directed: public safety, health, order, morals, and welfare. No purpose would be served to produce a lengthy litany of those choking laws ratified in the name of police power at some time or another; suffice it to say, the Supreme Court of the United States has found it "inadvisable" to set limits upon police powers, preferring a flexible norm and a case-by-case analysis,[45] recognizing that each and every such regulation speaks as a prohibition upon human choice.[46] Nevertheless, in each category lurks the very real danger of the use of police powers to curb creative endeavor beyond the proper scope of state authority.

Thus, in the name of public safety, states have enacted statutes prohibiting "dangerous" businesses and structures, not cognizant of the fact that voluntary action may assume risks concurrent with the values possessed.

In the name of public health, legislators fluoridate community water supply, in spite of evidence of detrimental effect upon human health and the ready availability of fluoride from other sources for private administration.

In the name of public order, the state may circumscribe or wholly proscribe gambling, drunkenness or public meetings; in fact, such repressions affect the free flow of ideas and action whether or not the majority agrees with the value of the action.

In the name of public morals, the government penalizes indecency, adultery, prostitution and "immorality," matters much better left to the decision of adult participants.

In the name of public welfare, the state plunders some and gives to others, a most devastating kind of immorality undeserving of the name of charity.

In each instance where the state exceeds its proper perimeters of preventing force and fraud and providing common justice, the application of police powers destroys human liberty and nurtures tyranny.

Richard Weaver once observed, "Ideas have consequences." The idea of police powers produces the consequence of slavery. These broad powers act as the state's sledgehammer, crimping free action and chilling personal creative endeavor.

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45 *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 102, 99 L. Ed. 27 (1954); *Christian v. LaForge*, 194 Or. 450, 460, 242 P.2d 797 (1952). A flexible rule amounts to no rule at all — "justice" measured by the subjective values of those currently in power, or, in legal parlance, "by the length of the chancellor's foot."

46 *Goldblatt v. Hempstead, supra*, Note 44, *op. cit.* 82 S. Ct. at 989.

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LARRY W. SARNER

Engineering Regulation: The Return to Medievalism

There are those who hail, in effect, the advent of state regulation of the several professions as "the bright, shining day" of public protection and professional responsibility, and they have held sway over the public consciousness for many years. Nevertheless, there are storm clouds building nearby, within the professions and without, and they threaten to eclipse, at least temporarily, regulation's source of power. There are those, again within and without, who are urging the clouds on. I am one.

While professional regulation by government is an accomplished fact in many fields, including engineering, it need not remain so. Unlike physical laws, government statutes do not necessarily mold reality; and also unlike physical laws, they can be repealed. Regulation is very much like the engine with positive-feedback throttle – a built-in tendency to get out of control that is not so much an error in design which can be engineered away as it is a blunder in conception which must be discarded. And it will not be so much a turning back of the clock merely to abandon the scheme as it appears on its face; for regulation itself is a throwback to bleaker, more desperate times. Consider:

(1) An organization is formed to protect the working conditions of the profession, though its primary justification is the protection of the public.

(2) All services are to be performed for a just price, with competition on price alone condemned as unprofessional.

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(3) Regulations governing the standard of quality are set up for each profession by its practitioners, since only these experts can determine what is the correct quality in the profession involved.

(4) Advertising of all kinds is prohibited.

(5) An "apprenticeship" is allowed for, permitting the training of young professionals.

(6) After a journeyman's experience, an individual may become a licensed professional, provided he passes an examination before other professionals, demonstrating his proficiency, his good character, and his financial standing.

(7) Unfair competition, especially price-cutting, is frowned upon. In fact, cooperation is the ideal, enforced if necessary by strict regulation on the part of the authorities.

(8) The enforcement of penalties against offenders is made possible through exclusion from the license, which means that the professional loses his right to do business.[1]

I believe the advocate of regulation will find the foregoing to be a fair representation of the basic elements necessary to control a profession, though motivations for them are conspicuously absent. The particular rationales were omitted because the elements are *not* a blueprint for regulation, at least as explicitly as that form is known today, though I contend the model fits very well. Instead, it is a faithful account of the essential characteristics of the medieval practice of *guilds*, which most historians will say passed from the Western scene nearly 500 years ago.

Guilds were a fascinating economic organization, viewed from afar. They provided stability, quality, and social cohesiveness for whole classes of people. But they were also tyrannical, corrupt, and economically unviable in a society where change, technological progress, freedom, and capital investment were the norms. Thus the institution faded in influence and power, and its final vestiges were abolished by freedom-minded reformers centuries ago. Their passing was not lamented; the cause of human progress was immeasurably advanced by their disappearance. As economist Milton Friedman has stated, "The overthrow of the medieval guild system was an indispensable early step in the rise of freedom in the Western world. It was a sign of the triumph of liberal ideas, and widely recognized as such, that by the mid-nineteenth century, in Britain, the United States, and to a lesser extent on the continent of Europe,

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men could pursue whatever trade or occupation they wished without the by-your-leave authority of any governmental or quasi-governmental authority."[2]

But there are those in the twentieth century who are effectively urging a return to feudal practice. They are insisting that the state resume its interference with the right of the individual to engage in a commercial or professional activity of his or her own choosing. Despite the historical evidence of 1,000 years of what was appropriately labeled the "Dark Ages," and the insurmountable arguments pointing toward present-day economic untenability akin to the waning days of the guilds, the tendency toward state regulation has successfully grasped the engineering profession.

"Public Protection"

The foremost palliation given for dusting off this ancient despotism is not particularly original. John D. Constance, in the pages of THE BENT, for example, used the old saw of public protection: "Practically every design" he contends, "every operation, and every process developed by engineers has public implications. . . . It should be evident that engineering, because of these implications, *must be regulated by the state* – and must come under the police powers of the various states – to provide this protection to the public."[3] [The emphasis was his.] But as the public record of such regulation, from the Dark Ages to the present day, is increasingly exposed to objective scrutiny, the claim increasingly shows tarnish and wear. Friedman, again, shows: "The pressure on the legislature to license an occupation rarely comes from the members of the public who have been mulcted or in other ways abused by members of the occupation. On the contrary, the pressure invariably comes from members of the occupation itself. Of course, they are more aware than others how much they exploit the customer and so perhaps they can lay claim to expert knowledge."[4]

Citizens' groups and public interest lobbies are now pressuring legislatures to review the occupational licensure provisions in their states. And what some of these investigations are uncovering is a record of public abuse rather than protection. If the "public protection" argument is to hold water, it must show three things: first, that there is an abuse that needs to be corrected; second, that professional review is an effective means of correcting such abuses; and third, that the police powers will not be turned against the public itself. Yet, as to the first, rarely if

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ever has any trustworthy evidence been produced to show that abuses exist outside the purview of criminal statutes which can be more effectively treated with regulatory procedures; those that ostensibly exist are usually straw men the regulators can conveniently pick apart or carefully screened single instances gleaned from decades of searching. Thus, on the first count, the *cause celebre* of public protection wanes.

A Stream of Failures

The cause fails on the second count as well, however. The record, at least in Colorado, Florida, Iowa, and probably in the remainder of the states, shows an entirely contrary performance to the public interest. For instance, in Colorado, the head of the Department of Regulatory Agencies revealed recently that, "In 1971, not one doctor – not one dentist – had ever had a license suspended or revoked" in Colorado.[5] This is a remarkable testimony to the competence of Colorado's medical practitioners – if anyone genuinely believes that not a single reproachable medical practice was undertaken in a state of two million people during 365 or more days. It contrasts sharply with the apparently rampant incompetence in Florida's construction industry, where 2,149 candidates took the general contractor's examination in 1973 and *every one* of them flunked.[6] Concomitantly, the state's official sanction to an incompetent, when it is given, causes even greater damage than if nothing is given at all. Says Earl Johnson, the Colorado regulator: "The greatest harm is done by the hack with a license. The state says he's qualified and he's not. That hurts the public whether the incompetent is a dentist, a pharmacist or a plumber."[7]

A negative performance in the third area makes the failure complete. In addition to the blatant restrictions of membership as evidenced in the Florida case, there is mounting concern on the part of many groups over the guild-type regulations which limit the public's choices and hinder efficiency. Furors have been raised in Colorado over a regulatory prohibition of charitable hair-dressing of elderly women by "untrained" (i.e., unlicensed) beauticians, over the ban of competitive advertisement of pharmaceutical prices (successfully challenged by a large supermarket chain), and the enforcement of drug-abuse laws by the Board of Barber Examiners. in Florida similar storms have been howling over the regulations governing the professions of optometry, real estate, and medicine. And talk is circulating in Wash-

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ington of applying federal anti-trust statutes to the more "unreasonable" practices of regulatory commissions.

Of course, it can be argued by the pro-regulators, in an attempt to salvage something of what they've built, that these failures are more simply "abuses" needing only a little corrective salve. But it is my contention that there is much more to it than that. As before, the engine is a run-away not because of faulty design, but because of fundamental misconceptions. I hope to show herein that systemically regulation (1) fosters monopolistic growth of power, stagnating the profession; (2) fails to achieve its purported goals; and (3) is an unsupportable violation of human rights and freedom. Of course, it should be said up front that my basic predilection is that the *opposite* of each of these effects is desirable and that the affects themselves are to be avoided if alternatives can be found.

Beware of Coercion

First, as to the monopolistic growth of power, my concern rests thus: the introduction of government into any area of legitimate endeavor is *never* an improvement over any state of affairs. The growing mountain of evidence, from the recent localized studies of Bernard Siegan *(Land Use Without Zoning)* to the current series of articles of *The Wall Street Journal* concerning the effects and operations of federal regulatory agencies, is giving a strong presumption against government regulation of all types and at all levels. Slowly, citizens are becoming aware that regulation in their *name* has not been consistently in their *interest*, and more often than not against it. Pretty much, regulation is instead a concession by men of mediocre abilities in the professions involved (or men with greater competence, but less psychological security) that they are unable to cope with the world and want others to do it for them. Licensure is an introduction of *politics* into an arena where politics is not only irrelevant, but destructive. The possession of competence in a given field is an objective fact, not the product of a political decision. Yet, where you have government intervention, you have political decisions, not objective ones.

The prime power in the licensure process is the ability to restrict entry to the profession. Every regulated profession, at one time or another (or continuously) has used the licensing structure to restrict its numbers. They can, and do, adopt guild-like requirements for admission. Colorado, for

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example, insists that its engineering applicants provide five character references, at least three of whom must be professional (licensed) engineers. The board which passes on applicants is composed exclusively of engineers who have been licensed for at least ten years.[8] An immediate concern for Colorado's engineers is how long it will be before the inherent inbreeding of such a process creates a form of professional hemophilia.

How Intervention Grows

Already the symptoms are beginning to show. It is possible, for example, for a group of professional arbiters, with immense credentials in the advocacy of regulation, to spell out terms to the profession and to the public. Engineers can see this particular tendency in the drive of certain regulators to achieve a forced unnatural union of the engineering profession. Mr. Constance, a leading spokesman, would have the regulators oppose the fragmentation of the profession (a process which would have the – laudable – effect of making regulation more difficult, and power that much more difficult to exercise). "To counteract this tendency [toward specialization]," he says, "those who have been concerned with licensing have superimposed an effort to get unity."[9] This is a fortuitous example, for it demonstrates vividly the contention that regulation will, in the normal course of events, expand beyond its nominal scope of public protection and engage in superfluous matters.

On the public side, as I have mentioned before, many consumer groups of late have shown an increasing alarm at the inbred nature of the professions and their regulators. The medical profession, for example, is now under heavy attack for the oppressive nature of its regulatory procedures. The ability of the medical societies to utilize the state's power to circumcise health care to suit the cliquish desires of their leaders has proven too much for the general public to bear. The severe limitations on the much-needed paramedics, the jurisdictional dispute between nurses and operating-room personnel, and of course the omnipresent thorns of chiropractic and acupuncture, have made the public acutely aware that regulation is not serving them any too well in one of the world's oldest, and probably most heavily regulated, professions. As an absolute minimum solution, the public pressure has been for the placement of consumer representatives on regulatory boards. The professions will naturally resist, mostly on the claim that professional competence is prime, but politics is politics and

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eventually the "public" will have its way and some just deserts will be forthcoming.

For the engineer, an additional problem will be posed by a public thirsting for new ideas and processes in an age of energy "crises" and famine. If the profession begins to make excuses instead of "delivering the goods," it will find itself facing a skeptical, increasingly hostile electorate. It will matter little that the profession's inadequacies are justifiable rationally; once having accepted a political method of approaching competence, there is an inexorable tendency to accept political methods in approaching all professional matters. This will subject the profession to the pressures of an American belief nearly as old as the nation, that a problem can be solved primarily by an exercise of will. As de Tocqueville noted about the national character over 140 years ago: "No natural boundary seems to beset the effort of man [in the American view]; and what is not yet done is only what he has not yet attempted to do."[10]

Yet standing against the tide are the regulators, or the would-be regulators, the ones who contend that professional engagement is a grab-bag of governmental favors and that if the engineers don't get in there and fight someone else will come along and pick off first what is justly theirs. Lawyers, they claim, will steal away their ability to write contracts; accountants will run off with their right to keep books; and architects will usurp their ability to look over blueprints. As an alternative to the undignified rush to the lawbooks, a more promising solution might be for engineers to give a loud "No!" to the usurpations of the others. Engineers' rights will not be assured by guild legislation; they will only be preserved by a consistent, vigorous defense made by honest engineers. The choice should not be made to "legalize" engineering at the expense of "criminalizing" honest craftsmanship.

As to the second point, the failure of regulation to achieve its purported aims: there are picayune methods of attacking the problem of "protecting" the public, and there are substantive ones. The picayune, for example, is the bloated concern over the use of titles. For a country little concerned with titles, noble and otherwise, since its founding, it is remarkable the concern which many regulators will attach to a designation such as "engineer," "doctor," "architect," or any one of a multitude of others. Somehow, it is thought, the unscrupulous will be thwarted if they cannot use the proper titles. But human ingenuity

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is boundless, and the small matter of a word presents but a tiny obstacle to either con man or journeyman. To the predictable consternation of every regulator, there is at least one best-selling author who baldly asserts that "licenses and regulations can be avoided by using a little imagination. There are plenty of psychologists who are unlicensed because they don't call themselves psychologists. And there are plenty of people who do the same things that teachers, doctors, architects, lawyers, beauticians, engineers, bankers, investment counselors, and psychiatrists do, but avoid the legal requirements by not using the legal titles."[11] Right or wrong, such views reflect how the "other side" views the subject of sacred titles. Fortunately for the regulators, the laws themselves are more substantive (in theory, at least) than the mere banning of a word. The law requires definitions to be operative, and Colorado law, for instance, defines the practice of engineering thusly:

> the performance for others of any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work, including consultation, investigation, evaluation, planning, design, surveying and mapping, and supervision of construction for the purpose of assuring compliance with specification and design, in connection with the utilizing of the forces, energies, and materials of nature in the development, production and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, buildings, works, or utilities, or any combination or aggregations thereof, employed in or devoted to public or private enterprise or uses.[12]

Clearly such a definition could conceivably be construed to include just about anything anyone did that employed the "forces, energies, and materials of nature" for someone else, from the inventor to the neighborhood mechanic to the office-building janitor (or "sanitation engineer"). What is fortunate, of course, for the continued smooth functioning of our society, is that no one, not even the dedicated regulator, seriously proposes that the letter of such laws be strictly enforced. But then what does this say of the legalistic process, if the only reasonable application of the laws is not an objective, but a subjective application of their provisions? The fault surely lies not with the definition; can anyone think of a better definition that will not encounter the same difficulties?

Additionally there is a total lack of evidence to show that any *fewer*

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incidents of fraud, deceit, or misrepresentation have followed the adoption of regulatory procedures. Indeed a case can be made that the lot of the incompetent or the bunko artist has been made much easier by the passage of such laws. In Colorado, the worst that a violator of the regulations can expect is to be restrained from further activity by an injunction and a fine of from $100 to $500; if he were guilty of (and taken to court for) *fraud,* however, he could receive one to five years in the penitentiary and upwards of $15,000 in fines. Insofar as the predisposition of the government is in favor of its regulatory over its criminal procedures, the difference in penalties represents a net gain for the dishonest; at the very least, it represents the opportunity to plea-bargain. Alternatively, however, the honest practitioner who would not normally be subject to fraud penalties because he has committed no crime could be held to an injunction depriving him of his chosen livelihood. The upshot of all this is that the honest live in fear of the government and the dishonest are granted reprieves from it. The disparity of such results does not instill confidence in the process.

Further if a person is truly unethical and wants the title, how does the regulatory procedure designed to test his "ethics" conceivably prevent him from exercising his lack of them by lying to the authorities and consequently deceptively receiving his license? And if a person is incompetent, how does the procedure prevent him from knowing just barely enough to pass the examinations (or even cheating somehow), and forgetting most of it afterwards? For that matter, how is this last result prevented on the part of the once-competent, after their hands are on the license?

Freedom Violated

Of them all, however, the most impressive argument to me against state intervention is on the third point, that regulation violates human rights and freedom. Mr. Constance makes the point that a minimum legal standard "assures that the practicing engineer is qualified in the eyes of the law, giving him legal status and providing him with the right to make available his services to the public."[13] I could not differ more strongly. No such law can ever give any man such a right. *It is his from the day he is born.* Man's fundamental nature requires a full application of liberty in every pursuit; the only legitimate restraint is that he not initiate force against another human being, or threaten to initiate force. His liberty includes the right to engage in mental and phys-

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ical labor for his own benefit and the benefit of those around him, if he freely chooses. Inherent in this right is the ability to offer this labor to anyone who may voluntarily choose to purchase it. It is my contention, as a point of personal and professional need, that no statute, no regulation, no legal provision can ever *give* (or take) this right. For the ability to give is also the ability to deny, and for the government to have this power would be the severest abrogation of human freedom. It must be resisted at every turn. As philosopher John Hospers recently wrote in relation to this subject, "What gives the government any special right or any special ability, to separate the wheat from the chaff in such matters?"[14] I certainly see none, and to give the slightest sanction to the state in this regard is a betrayal of principle. Consequently I, for one, will never, under any circumstances, submit to licensure or examination of my professional qualifications by the state.

Attractive Alternatives

The alternatives to regulation can be attractive, provided people do not lock themselves into thinking only in terms of government solution. The most promising of them is the deliberate use of professional *reputation* and an attitude of *professionalism*. Along with a vigorous enforcement of criminal statutes against abuses such as fraud, malicious injury, and malpractice, the best assurance that any member of the public has against professional abuse is reputation. If an engineer's reputation is a bad one, he should be avoided; if it is good, he should be patronized. This principle can extend beyond this point even if he is personally unknown to the prospective client; the client can consider his schooling: does his school have a reputation for turning out good, bad, or mediocre engineers; or is he an honorable or distinguished graduate of the celebrated school of hard knocks? Has he worked previously with men or women who have good reputations or bad? If his reputation is still uncertain, the questions could then revolve around his performance with other clients, the breadth of his experience, vitality, and imagination. A system based on character and professionalism must work, or no system can.

Parenthetically it should be recognized that it is possible, indeed even probable, for private bonding agencies to certify technical competence and for customers to expect bonding. Unlike government agencies, bondsmen would have a financial stake in making correct decisions on competence (deny it, they lose a premium; grant it,

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they could lose the bond), and further, unlike government agencies, they do not have life or death powers over the profession. It would not be criminal to be unbonded; at present, it *is* criminal to be unlicensed.

And there are also the other alternatives: professionally developed and voluntarily subscribed codes of ethics, membership in professional and honor societies, and publications of the *Consumer Reports* variety, all of which can be used by the concerned public.

If the consumer chooses correctly and gets what he wanted or paid for, perhaps more, does it matter if the professional was "unlicensed"? And ultimately if the consumer selects unwisely and is criminally injured, he has recourse to the law for recovery and punishment. Of course, if he takes a chance on an unknown, and it works out wrong, then the fault lies entirely with him. It is not the type of system that permits the consumer to be lax in his judgment and allow the faceless mass of the body politic to assure him that his decision will always be correct; it is instead the type of system that demands the most from both professional and client. And that is what makes for progress.

The aims set forth in Tau Beta Pi are to establish an appreciation of standards of character and to free technical people from the fetters of their narrow technology, to make them aware of man's history and potential in all areas.[15] Regulation undermines this, as I have attempted to show, by relying on the power and mechanical processes of the state's attempts to assure that a judgment on character and breadth of understanding is unnecessary.

Promoting Integrity

Our purpose, as set forth in the Eligibility Code, is the promotion of true integrity, *sine qua non*.[16] But regulation destroys the importance of integrity by presuming an inherent tendency to defraud and destroy. It attacks those with integrity by requiring them to submit their standards of professionalism to review by committee. How can "high standards of truth and justice" be determined by a majority vote?

And regulation is attacking the root of the profession, the engineer himself. As Milton Friedman asserted in his essay, "There are many routes to knowledge and learning and the effect of restricting the practice [of a profession] . . . and defining it as we tend to do to a particular group, who in the main have to conform to the prevailing orthodoxy, is certain to reduce the amount of experimen-

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tation that goes on and hence to reduce the rate of growth of knowledge in the area."[17]

It is a natural extension of all that I have said here that it is not enough to merely oppose such laws, or to speak out against their advocacy. If this matter is as important as I believe it to be, it is imperative that efforts be made to *repeal* this legislation and return from the Dark Ages. Should I personally ever be in a positon to do so, I will gladly introduce the legislation. To leave such laws on the books is to pose a very real danger to the profession, to the public, and to the world. Guild laws are a false sun in the firmament of a free people; and the "bright, shining day" they create is an illusion. In the words of John Stuart Mill in his classic essay *On Liberty:*

The worth of a State, in the long run, is the worth of the individuals composing it; and a State which postpones the interest of *their* mental expansion and elevation, to a little more of administrative skill, or of that semblance of it which practice gives, in the details of business; a State which dwarfs its men in order that they may be more docile instruments in its hands even for beneficial purposes – will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.[18]

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15 Pamphlet, Tau Beta Pi, dated April 1972.

16 *The Eligibility Code of The Tau Beta Pi Association*, adopted by the 1926 convention.

17 Friedman, p. 157.

18 John Stuart Mill, *On Liberty* (New York: Appleton-Century Crofts, 1947), pp. 117-18.

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Street Corner Conservative

POLITICS, in America, offer a study in perversity. The opinion polls tell us that more and more people regard themselves as conservatives. In economic matters, they lean toward freedom, low taxes, and a stable currency. On the so-called social issues, they are against forced busing, crime, the violent disruption of schools, abortion-on-demand, pornographic magazines and films, and sexual promiscuity. Yet the governments we get seem powerless to support the economic and social life-styles that the new conservative majority so obviously wants.

It could be an accident of Watergate. The Republicans, with a 1968 and 1972 conservative mandate in hand, simply blew it. Such, at any rate, is the conclusion of Kevin Phillips, William Rusher and other close students of demographic trends. Since only a minority of the voters bothered to turn out for the 1974 mid-term elections, it could be that we are, at this moment, saddled with a most unrepresentative Congress.

What are the chances for conservatism, which we must equate with traditional liberalism, in 1976? A lot will depend on people who are casually described as the "ethnics." William F. Gavin, who wrote speeches for the Nixon entourage in 1968 and lived to be disillusioned, takes up the cudgels on behalf of these "ethnics" — the Poles, the Italians, the Irish —in *Street Corner Conservative* (Arlington House, $7.95). In a delightfully sardonic prose Mr. Gavin tells us that big centralized government, with its costly Great Society programs and its attempt to legislate equality, has utterly failed the urban, or street corner, conservative. Mr. Gavin is not at all certain when it comes to predicting the future, but a big bloc

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of votes is there for the taking if some party or dominant political figure really decides to abandon the stereotype that holds the poor must go with the "liberals" because they have done it through all the years of the Roosevelt, Truman and Kennedy coalitions.

Mr. Gavin grew up in Jersey City. He has been to college and has taught in high school, and he can give all of Bill Buckley's arguments against what he calls, "the left-liberal canon." He thinks sophisticated reasoning is important when you are confronting "liberal" college professors, but it is enough for himself, and the people he comes from, that "liberal" programs have not worked. The "urban conservative," who is, more often than not, a Roman Catholic, comes from a great tradition whether his name is Gavin or Mikolajczyk or Fasano. He doesn't need references to John Stuart Mill to convince him that "liberal" toleration of the wave of anarchy and campus terror of the late Sixties and early Seventies did nothing for the working man or his family. Nor does the urban conservative need a detailed knowledge of Ludwig von Mises' *Human Action* to tell him that free enterprise is "both eminently sensible and demonstrably effective." The street corner conservative's ideas of freedom within a context of moral order come from something he "has known since childhood."

Less Intervention

So what is it that Mr. Gavin's people want? Mr. Gavin spells it out in negatives that are thoroughly consistent with historic Jeffersonianism. The urban conservatives "don't want anything, except to be left alone, to live their own lives." The only part of the world they want to change is the small part they are familiar with – "and even this kind of change must be slow." They like the structure of life into which they were born, and they are content if only they can have "a little bit more of what they already have for themselves and a chance of material betterment for their children." They don't go in for abstract "do-goodism," but if a "second collection" is taken up in church for the "hungry and the poor" they will pour forth money because it is going through a channel they trust.

The urban conservative is loyal to his union, but this does not mean that his vote is in anybody's pocket. Mr. Gavin asks a simple question: "have our unions been loyal to us?" He doubts that the urban conservative, as a union man, is prepared to "depend on the total domination of a given

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craft or industry by an organization that won't let peoeple work unless they belong." In short, the urban conservative believes in "right to work." This is why, in all the public opinon polls, "right to work" fares almost as well with union members as it does with the general public.

Mr. Gavin does not see his street corner conservatives as "beholden to business," whether "big, small or medium." Business, to the urban conservative, is "a way of making money." Mr. Gavin remarks that "maybe we should start making some of that money ourselves instead of using our energies to help liberal intellectuals stop others from making money." This could be "crass materialism" in "liberal" eyes, but if it is, then "let the liberal intellectuals sell their summer cottages, let the college professors cut off their consultant fees," and "let John Kenneth Galbraith stop flying to Switzerland." "Then, and only then," says Mr. Gavin, "will we stop looking for material comfort in a legitimate way."

Foreign Affairs

Mr. Gavin doesn't kid himself that his street corner conservatives like the military life. But they know "that it is a tough world and that the military is all that is standing between us and a lot of people who would do this country as much harm as they could." Urban conservatives want a strong defense in order to preserve "a chance to be what we want to be, which is a hell of a lot more than a lot of our friends and relatives in certain nations of Europe have had for a generation."

The street corner conservative doesn't trust Communism, and positively dislikes Communists. But he "can live with them and despise them at the same time" provided they keep their distance. What Mr. Gavin wants, as a foreign policy, is "a cool but correct attitude toward totalitarian dictatorships that have the potential to destroy our nation." This is something different from a constant slobber about "detente." It does not mean going into agonies about the "destruction of democracy" when a potential Leftist totalitarian tyrant such as Allende gets booted out of office in Chile.

The street corner conservative is often called a "racist." Mr. Gavin denies the imputation. "Most city people," he says, "have certain patterns of life built around a school or a church or a certain group of stores and anything that upsets that pattern is fiercely combatted." The working class revolt against forced busing for racial balance is a "predictable

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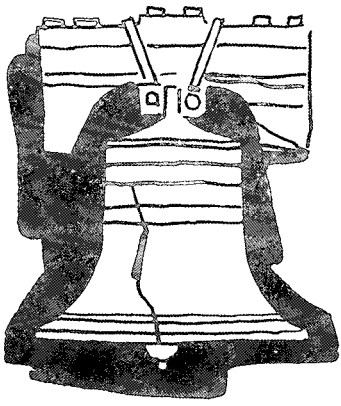

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